73-1691

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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1974

No. A-792

SANFORD S. PARIS, DBA GENERAL SECURITY SERVICES, INC.

Petitioner

v.

GERALD E. WEDREN, DIRECTOR, DEPARTMENT OF COMMERCE, et al.,

Respondant

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

Andrew M. Fishman
THOMPSON, SWOPE, BURNS & BISWAS
6810 E. Main Street
Reynoldsburg, Ohio 43068

Counsel for Petitioner

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Respondant

AFFIDAVIT CERTIFYING SERVICE

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

I, Andrew M. Fishman, being first duly sworn according to law, depose and say that I have on this ____day of _____, 1974, mailed a copy of the attached Petition for Writ of Certiorari to the Supreme Court of the State of Ohio, to Gary Brown, Assistant Attorney General of the State of Ohio, Office of the Attorney General, State of Ohio, Columbus, Ohio 43215 this ____ day of _____, 1974.

Andrew M. Fishman

Sworn to before me and subscribed in my presence, this ____ day of _____, 1974.

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IN THE SUPREME COURT OF THE UNITED STATES
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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF OHIO

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Ohio, entered in the above-entitled case on December 13, 1973 overruling petitioner's Motion for an Order Directing the Court of Appeals for Franklin County to Certify its Record.

CITATIONS TO OPINIONS BELOW

The record of the hearing held before the Ohio Department of Commerce on October 21, 1971 is unreported but is reprinted and appended hereto as Appendix A, and is hereinafter referred to as the "Hearing." The Findings of Fact, Conclusion of Law and Recommendation of Action of Victor S. Krupman, Hearing Officer, ("Findings of Fact") which

were filed with the Ohio Department of Commerce on December 10, 1971 are not reported but were reprinted and are appended hereto as Appendix B. A copy of the Department Order ("Department Order") revoking the license of petitioner is unreported but has been reprinted and is appended hereto as Appendix C.

The Judgment Entry of the Court of Common Pleas of Franklin County, Ohio ("Common Pleas Judgment") filed on March 27, 1973 at 3:09 P.M. is unreported but a copy has been reprinted and is appended hereto as Appendix D.

The Decision of the Court of Appeals of Franklin County, Ohio ("Appellate Decision") rendered on August 28, 1973 is unreported but a copy has been reprinted and is appended hereto as Appendix E.

The decision of the Supreme Court of Ohio is also unreported. Such decision is reprinted, appended hereto as Appendix F and hereinafter referred to as the "Supreme Court Decision."

All appendices which have been appended hereto are hereby made a part of this petition.

JURISDICTION

The Supreme Court of the State of Ohio, the highest court in the State of Ohio in which a decision could be had, rendered a final judgment in the above-entitled case by overruling petitioner's Motion for an Order Directing the Court of Appeals for Franklin County to Certify its Record on December 13, 1973.

On February 20, 1974 this Court entered its Order Extending Time to File Petition for Writ of Certiorari by extending such time period to and including May 11, 1974.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3), petitioner claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

QUESTIONS PRESENTED FOR REVIEW

In the opinion of the petitioner the following questions are presented for review:

I. WAS PETITIONER DEPRIVED OF HIS RIGHTS OF DUE PROCESS OF LAW GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA BY VIRTUE OF THE FACT THAT THERE EXISTS ON THE RECORD NO EVIDENCE THAT THE PETITIONER KNOWINGLY FAILED TO REGISTER EMPLOYEES WITH RESPONDENT?

II. DID THE ACT OF THE HEARING OFFICER IN MAKING FINDINGS OF FACT BASED UPON EVIDENTIAL FACTS NOT SPREAD UPON THE RECORD DEPRIVE PETITIONER OF DUE PROCESS OF LAW GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

III. DID THE FAILURE OF THE RESPONDENT'S NOTICE OF INTENTION TO REVOKE PETITIONER'S LICENSE TO INCLUDE DIRECT REFERENCE TO THE STATUTE AND REGULATION UNDER WHICH SUCH LICENSE WAS SOUGHT TO BE, AND ULTIMATELY WAS, REVOKED DEPRIVE PETITIONER OF DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

IV. DO THE FOREGOING ISSUES CONSTITUTE MATTERS OF GREAT PUBLIC IMPORTANCE?

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT XIV
(Rights of Citizens)

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

OHIO REVISED CODE ("CODE") §119.07 - Notice of Hearing (Volume 1, Page's OHIO REVISED CODE ANNOTATED pp. 176-177)

"§119.07 Notice of hearing; contents; notice of order of suspension of license; publication of notice; effect of failure to give notice.

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing him of his right to a hearing. Such notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for such proposed action, the law or rule directly involved, and a statement informing the party that he is entitled

to a hearing if he requests it within thirty days of the time of mailing the notice. The notice shall also inform the party that at the hearing he may appear in person, by his attorney, or by such other representative as is permitted to practice before the agency, or may present his position, arguments, or contentions in writing and that at the hearing he may present evidence and examine witnesses appearing for and against him. A copy of such notice shall be mailed to attorneys or other representatives of record representing the party. This paragraph does not apply to situations in which such section provides for a hearing only when it is requested by the party.

When a statute specifically permits the suspension of a license without a prior hearing, notice of the agency's order shall be sent to the party by registered mail, return receipt requested, not later than the business day next succeeding such order. Such notice shall state the reasons for the agency's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if he requests it within thirty days of the time of mailing the notice. A copy of such notice shall be mailed to attorneys or other representatives of record representing the party.

Whenever a party requests a hearing in accordance with this section and section 119.06 of the Revised Code, the agency shall immediately set the date, time, and place for such hearing and forthwith notify the party thereof. The date set for such hearing shall be within fifteen days, but not earlier than seven days, after the party has requested a hearing, unless otherwise agreed to by both the agency and the party.

When any notice required by sections 119.01 to 119.13, inclusive, of the Revised

Code, to be sent by registered mail, is returned because of inability to deliver, the notice required shall be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located. A copy of the newspaper, with the first publication of said notice marked, shall be mailed to the party at such address and the notice shall be deemed received as of the date of the last publication.

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, in the manner provided in this section shall invalidate any order entered pursuant to such hearing." (Emphasis added.)

CODE §. 119.12 (Supp. 1972) - Appeal (Volume 1, Page's OHIO REVISED CODE ANNOTATED pp. 182-183, 1972 Supplement pp. 24.)

"§119.12 Appeal by party adversely affected.

Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license, registration of a licensee, or revoking or suspending a license, may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, provided that appeals from decisions of the liquor control commission may be to the court of common pleas of Franklin county. If any such party is not a resident of and has no place of business in Ohio, he may appeal to the court of common pleas of Franklin county.

Any party adversely affected by any order

of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, except that appeals from orders of the fire marshal, issued under section 3737.20 of the Revised Code, may be to the court of common pleas of the county in which the building of the aggrieved person is located.

This section does not apply to appeals from the department of taxation.

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of his appeal. A copy of such notice of appeal shall also be filed by appellant with the court. Unless otherwise provided by law relating to a particular agency, such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms. In the event an appeal is taken from the judgment of the court and the court has previously granted a suspension of the agency's order as provided in this section such suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated. No renewal of a license or permit shall be denied by reason of such suspended order during the period of the appeal from the decision of the court of common pleas. The final order of adjudication may apply to any renewal of a license or permit which has

been granted during the period of the appeal.

Within twenty days after receipt of notice of appeal from an order in any case wherein a hearing is required by sections 119.01 to 119.13, inclusive, of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed shall, upon motion, cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed ten days, when it is shown that the agency has made substantial effort to comply. Such record shall be prepared and transcribed and the expense thereof shall be taxed as a part of the costs on the appeal. The appellant must provide security for costs satisfactory to the court of common pleas. Upon demand by any interested party, the agency shall furnish at the cost of the party requesting it a copy of the stenographic report of testimony offered and evidence submitted at any hearing and a copy of the complete record.

Unless otherwise provided by law, in the hearing of the appeal the court is confined to it by the agency. Unless otherwise provided by law, the court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.

The court shall conduct a hearing on such appeal and shall give preference to all proceedings under sections 119.01 to 119.13, inclusive, of the Revised Code, over all other civil cases, irrespective of the position of the proceedings on the calendar of the court.

The hearing in the court of common pleas shall proceed as in the trial of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to such action. At such hearing counsel may be heard on oral argument, briefs may be submitted, and evidence introduced if the court has granted a request for the presentation of additional evidence.

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. Such appeals may be taken either by the party or the agency and shall proceed as in the case of appeals in civil actions as provided in sections 2505.01 to 2505.45, inclusive, of the Revised Code. Such appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules and regulations of the agency and in such appeal the court may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record. Such appeals may be taken regardless of the fact that a proceeding was

pending prior to the amendment of this section expressly authorizing such appeals, provided such appeals are perfected by the filing of notice of appeal within the time prescribed by section 2505.07 of the Revised Code.

The court shall certify its judgment to such agency or take such other action necessary to give its judgment effect."

"119.12 Appeal by party adversely affected.
* * * (No change in first five paragraphs)

Notwithstanding any other provision of this section, any order issued by a court of common pleas suspending the effect of an order of the liquor control commission suspending or revoking a permit issued under Chapter 4303, of the Revised Code shall terminate not more than fifteen months after the date of the filing of notice of appeal in the court of common pleas, even if the matter has not been finally adjudicated within that time."
* * * (No change in remainder of section.)

CODE § 2505.21, (Supp. 1972) - Appeal (Volume 25,27, Page's OHIO REVISED CODE ANNOTATED, 1972 Supplement p. 20)

"2505.21 Hearing on appeal.

Appeals taken on questions of law shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant before hearing. Errors not specifically pointed out in the record and separately argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or specified. Failure to file such briefs and assignments of error within the time prescribed by the court rules is cause for dismissal of such appeal. All errors assigned and briefed shall be passed upon (by) the court. In its decision the reviewing court

shall specify such of the assigned errors as it finds are shown by the record and the reasons for its decision. In every case where a judgment or order is reversed and remanded for a new trial or hearing, in its mandate to the court below, the reviewing court shall state the errors found in the record upon which the judgment of reversal is founded.

An appeal taken on questions of law and fact entitles the party to a hearing and determination of the facts de novo which shall be upon the same or amended pleadings. The court shall review the final order, judgment or decree upon such part of the record made in the trial court as any party may present to the court and such additional evidence as upon application in the interest of justice the court may authorize to be taken, such evidence to be presented in the manner and form prescribed by the court."

CODE § 4749.01 (A) and (B) (Supp. 1972) - Definitions (Volume 47, Page's OHIO REVISED CODE ANNOTATED 1972, Supplement pp. 138-139)

"4749.01 Definitions

As used in sections 4749.01 to 4749.10, inclusive, of the Revised Code:

(A) "Private investigator" means any person who engages in the business of private investigation, as an individual, a partner, or an office of a corporation.

(B) "Business of private investigation" means, except when performed by one excluded under division (C) of this section, engaging in any of the following for hire:

(1) Furnishing watchmen, guards, private patrolmen, or other persons whose primary duties are to protect persons or property;

(2) Conducting any investigation relevant to any crime or wrong done or threatened,

or to obtain information on the identity, habits, conduct, movements, whereabouts, affiliations, transactions, reputation, credibility, or character of any person, or to locate and recover lost or stolen property, or to determine the cause of or responsibility for any libel or slander, or any fire, accident, or damage to property, or to secure evidence for use in any legislative, administrative, or judicial investigation or proceeding."

CODE § 4749.04 (Supp. 1972) - Revocation or Suspension of License (Volume 47, Page's OHIO REVISED CODE ANNOTATED, 1972 Supplement, pp. 140)

"§ 4749.04 Revocation or suspension of license; appeal.

The grounds for which the director of commerce may revoke, suspend, or refuse to renew the license of any private investigator or the registration of any employee includes any of the following:

(A) Violation of any of the provisions of division (B) of section 4749.10 of the Revised Code;

(B) Conviction of a felony or a crime involving moral turpitude;

(C) Violation of any regulation of the director governing the conduct of the business of private investigation;

(D) Testifying falsely under oath in any judicial proceeding or suborning perjury therein.

Any person whose license or registration is revoked, suspended, or not renewed may appeal in accordance with Chapter 119, of the Revised Code." (Emphasis added.)

CODE § 4749.06 (A) (Supp. 1972) - Duty to Register Employees (Volume 47, Page's OHIO REVISED CODE ANNOTATED, 1972 Supplement, p. 141)

"4749.06 Registration of private investigator employees; identification card required.

(A) Each private investigator shall register his employees, exclusive of clerical help, with the department, which shall compile and keep current a list of all licensees and registered employees and make it available upon request, to any law enforcement agency."

CODE § 4749.10 (A) and (B) (Supp. 1972) - Prohibitions (Volume 47 Page's OHIO REVISED CODE ANNOTATED, 1972 Supplement, pp. 142)

"4749.10 Prohibitions

(A) No person shall engage in the business of private investigation unless he is licensed as provided in Chapter 4749. of the Revised Code. Each day of continuing violation constitutes a separate offense. Nothing in Chapter 4749. of the Revised Code shall be construed to require any director, officer, partner, or employee of a corporation, partnership, or person engaged in the business of private investigation, to obtain a private investigator's license, when such director, officer, partner, or employee is engaged only in administrative or clerical activities and does not act as a private investigator or directly supervise investigatory activities in this state.

(B) No private investigator or registered employee shall:

(1) Knowingly violate any provision of

Chapter 4749. of the Revised Code;

(2) Knowingly make a false report with respect to any matter with which he is employed;

(3) Divulge any information acquired from or for a client to persons other than the client or his authorized agent without express authority to do so or unless required by law;

(4) Knowingly accept employment which includes obtaining information intended for illegal purposes." (Emphasis added.)

CODE § 4749.99 (Supp. 1972) - Penalties (Volume 47 Page's OHIO REVISED CODE ANNOTATED, 1972 Supplement, pp. 142)

"4749.99 Penalties.

Any person who violates any provision of section 4749.10 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not more than one year, or both."

Ohio Department of Commerce Regulation COc-5-11:

Registration of Employees

"(A) Each licensee shall, except with respect to administrative and janitorial personnel, and to persons exempt from registration pursuant to section 4749.06, Revised Code:

(1) Within ten (10) days after the employment of each new employee, file the appropriate registration form with the Department of Commerce, Division of Licensing.

(2) Within ten (10) days after the termination of a registrant's employment, notify the Division of such termination, giving the date thereof, and submitting said employees identification card for cancellation."

STATEMENT OF THE CASE

A. Summary of Relevant Statutes and Regulations:

1. CODE § 4749.06 (A) requires that all individuals who are to be employed as security guards be registered with the respondant. The statute provides no time limitation for such registration.
2. Respondant's Regulation COc-5-11 requires that such registration be within ten (10) days of employment.
3. CODE § 4749.10 (B) (1) prohibits anyone from "knowingly" violating any of the provisions of Code Chapter 4749.
4. CODE § 4749.04 (A) empowers respondant to suspend or revoke a license for violation of any of the provisions of CODE § 4749.10(B).
5. CODE § 4749.04(C) enables respondant to suspend or revoke a license for violation of any regulation of Commerce. (Significantly there is no statutory authority to revoke or suspend a license for violating CODE § 4749.06(A).)
6. CODE S 4749.99 provides a $100.00 to $1000.00 fine and/or one year in jail for each violation of CODE § 4749.10.

B. Notice - Charges:

With the above statutory and regulatory material in mind, petitioner was notified by letters dated August 25, 1971 and September 21, 1971 that under the authority of CODE § 4749.04(A) and .04(C) respondant proposed to revoke his license for failure to comply with CODE § 4749.06 and CODE § 4749.03(A)(2). Copies of such letters

hereinafter collectively referred to as the ("Notice") are attached as Exhibits 1 and 2 respectively to the Record of the Hearing (Appendix A hereto.)

The parties agreed that the Hearing would take place on October 21, 1971.

By stipulation the Hearing was limited to matters concerning the possible violation of CODE § 4749.06 with the result that the allegations relating to CODE § 4749.03 (A)(2) are irrelevant. (Record of Hearing ("Record"), p. 2)

C. Hearing - Findings of Fact and Conclusions of Law:

The Hearing was held on October 21, 1971. As previously noted the Findings of Fact, (Appendix B) were filed with respondant on December 10, 1971. The following table will compare the Findings of Fact of Hearing Officer Krupman to the relevant testimony at the Hearing:

	Finding of Fact	Relevant Testimony
1.	On September 30, 1971, petitioner had employees not registered with Commerce. (Findings of Fact, pg. 2)	Testimony of John Gillespie, Chief of the Division of Licensing of the Respondant that the employees set forth in a letter to respondant dated October 5, 1971 (listing employees as of September 30, 1971 and attached as Exhibit 6 to the Record) were all registered as of the date of the hearing, October 21, 1971 (Record, p. 10)

Nowhere in the Record is there any testimony that on September 30, 1971 petitioner had in his employ individuals who were not registered. It follows that Hearing Officer Krupman based this finding of fact on matters outside the record.

Finding of Fact	Relevant Testimony
2. The following employees of General Security Services, Inc. were never registered:	
a. Earl Martin (Findings of Fact, pg. 3)	Testimony of Earl Martin that he turned in to Captain Topsail his fingerprints and photographs (Record, p.19)
b. Charles Taylor (Findings of Fact, p. 3)	Testimony by Charles Taylor that he turned in his fingerprints to Captain Topsail but did not remember if he turned in his photographs. (Record, p. 21-22)
c. Clarence Nicely (Findings of Fact, p. 3)	Testimony of Clarence Nicely that he turned in his photographs and fingerprints. (Record, p. 25)
d. Brady Knapp (Findings of Fact, p. 3)	Testimony of John Gillespie that as of the date of the Hearing all employees listed in Exhibit 6 to the Record (which included Brady Knapp) were registered. (Record, p. 10)

There is no direct testimony to support the finding that Messers. Martin, Taylor and Nicely were never registered. The record is even devoid of a general statement to that effect. The finding, with respect to Mr. Knapp is in direct conflict with the testimony of Mr. Gillespie. Again Hearing Officer Krupman must have looked to matters outside the record.

Based on these Findings of Facts and a finding that petitioner had been informally advised of the registration requirement (Findings of Fact, p. 2) (in a parking lot after hours by Mr. Gillespie and by Lt. O'Keefe of the Columbus Fire Department - Record, p. 9) (and denied by Mr. Paris - Record, p. 36), Hearing Officer Krupman arrived at the following Conclusions of Law:

1. That Petitioner "knowingly" violated CODE § 4749.06 (A) (Findings of Fact, p. 7) i.e., that he violated CODE § 4749.10(B)(1), which the Notice had not charged him with violating.
2. That petitioner "knowingly" violated respondant Regulation COc-5-11 (Findings of Fact, p. 8) (the 10 day requirement), which he also had not been charged with violating.

Based on these Conclusions of Law, Hearing Officer Krupman recommended a $1000.00 fine under the authority of CODE § 4749.99 (Findings of Fact, p. 9) - the criminal section - which petitioner also had not been charged with violating and for which petitioner could only be charged and convicted through a criminal judicial proceeding with the right, among others, to a jury trial.

D. Department Order.

On December 29, 1971 Gerald E. Wedren, acting Director of the Department of

Commerce, accepted the Hearing Officer's Findings of Fact and Conclusions of Law, but as to the penalty, revoked the license of the petitioner. (A copy of this order is appended hereto as Appendix C.)

E. Order of Suspension.
On January 7, 1972 the Franklin County Court of Common Pleas (Case No. 72CV-01-78), pursuant to CODE § 119.12 suspended the Commerce Order of Revocation until the matter is "finally adjudicated" or until further order of court. Due to the language of CODE § 119.12, the granting of this order by the court was tantamount to a finding that a refusal to grant the order would create "an unusual hardship."

F. History of Court Proceedings:
Pursuant to authority of CODE § 119.12 the Department Order was appealed to the Franklin County Court of Common Pleas. In both his brief with the Franklin County Court of Common Pleas ("Common Pleas Brief") and the Franklin County Court of Appeals ("Appellate Brief") petitioner's former counsel raised two assignments of error, designated as such, and presented four others which he referred to as four "Questions of Law," to wit:

ASSIGNMENTS OF ERROR

I. "The Director of Commerce erred in revoking the license of the Appellant herein on the basis that..., 'Sanford S. Paris, knowingly violated the provisions of Section 4749.06(A)' because the record is devoid of evidence of the intent necessary to 'knowingly' violate

the provisions of Chapter 4749, O.R.C. and therefore the decision is against the manifest weight of the evidence.

II. "The Director of Commerce erred in admitting and considering testimony and statutes which were not in issue in this case due to the facts that the issues and therefore the applicable law were agreed upon by counsel herein by stipulation."

QUESTIONS OF LAW

I. "Can an Administrative Agency Hearing Examiner consider evidnece and statutes which are not relevant to the issues stipulated by the parties.

II. "Can an Administrative Agency, after charging a party with violation of a statute, penalize that party where no penalty is provided by statute.

III. "Can an Administrative Hearing Examiner find that a party has violated a criminal statute.

IV. "Can an Administrative Hearing Examiner find that a party has willingly violated a criminal statute where such party has not been charged with such violation." (Emphasis added.)

On the first page of The HISTORY OF THE CASE portion of both Briefs, petitioner's former counsel quotes, verbatim, the first paragraph of the August 25, 1971 letter to petitioner notifying petitioner that respondant intended to revoke his license under the authority of CODE § 4749.04(A) and 04(C) "speci-

fically for failing to comply with" CODE § 4749.06 and CODE § 4749.03(A)(2).

In the ARGUMENT portion of such briefs, petitioner's former counsel made the following statements:

"There is no penalty for a violation of Section 4749.06 (A) contained in Chapter 4749 of the Ohio Revised Code. While it is true that Section 4749.04(A)(C) provides for a revocation of a license if Section 4749.10(B), O.R.C. or the Rules of the Division are violated and Section 4749.99, O.R.C. provides a penalty if there is a violation of Section 4749.10(B), no penalty exists for a violation of Section 4749.06(A). If the Appellee had desired to revoke the license of the Appellant, it should have charged the Appellant so. The Appellee never alleged a violation of Section 4749.10(B) of the Ohio Revised Code occurred. (Emphasis added.) (Common Pleas Brief, ARGUMENT, p. 3) (Appellate Brief, ARGUMENT, p.8)

"The penalty imposed by Section 4749.04(A) is clearly not applicable here because that section provides for revocation only where Section 4749.10(B) or a Rule and/or Regulation of the Division is violated. Section 4749.04 (A)(C) does not provide for revocation of a license where it is found that Section 4749.06 (A) is violated. (Common Pleas Brief, ARGUMENT, pp. 3-4) (Appellate Brief, ARGUMENT, p. 9)

Petitioner's former counsel's Common Pleas Brief and Appellate Brief concludes in relevant part as follows:

> "(2) A violation of Section 4749.06(A), O.R.C. incurs no penalty in and of itself. An administrative agency has no power or authority to impose its own penalty as it only has such powers to impose a penalty

against the Appellant even though it was found that a violation of Section 4749.06 (A) did occur. To allow a penalty to be imposed by finding a violation of another statute, with which the Appellant was never charged with violating and was not in issue herein, would exceed the power given to the Agency by statute and would therefore be contrary to law. (Supra)

"(4) The Order of the Director of Commerce is against the manifest weight of the evidence in that, even if the Appellant were charged with a violation of the Ohio Revised Code, Section 4749.10(B), the record is devoid of evidence showing the intent, i.e., 'knowingly', violating the statute. At best he is guilty of a failure to comply (Supra) (Emphasis added.) (Common Pleas Brief, ARGUMENT, p. 5) (Appellate Brief, ARGUMENT, p. 12)

The Common Pleas Judgment (Appendix D) simply follows that laguage of CODE § 119.12 holding that Department Order was "supported by reliable probative, and substantial evidence and is in accordance with law."

The same two assignment of error, so designated, were before the Franklin County Court of Appeals. As to the first, the Court held in the Appellate Decision (Appendix E) simply that it felt that "the record could support a finding that the[.. Respondant] was well aware that his employers were required to be registered and knew that in fact they were so registered." (Emphasis added.) Based on that the court concluded that the respondant "knowingly violated the provisions of Chapter 4749 of the Ohio Revised Code." (Appellate Decision, p. 2)

As to the second assignment of error, so designated, the Franklin County Court of Appeals, although admitting that petitioner was charged only with violating CODE § 4749.06(A) found that evidence relating to a possible violation of CODE § 4749.10 was proper.

The issues raised by petitioner's former counsel in the Supreme Court of the State of Ohio were near facsimiles of those raised at the Court of Appeal and do not merit separate discussion herein.

The Supreme Court of Ohio on December 13, 1973 overruled petitioner's Motion to Certify without rendering an opinion. (A copy is appended hereto as Appendix F.)

THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE PROPERLY RAISED

A. Law in General

CODE § 119.12 governs the appeal from the Admininstrative agency to the Franklin County Court of Common Pleas. This section provides that "[s]uch...shall proceed as in the case of civil actions as provided in sections 2505.01 to 2505.45 inclusive, of the Revised Code." The appropriate section governing the issue of whether the questions sought herein to be reviewed were properly raised below is CODE S 2505.21 (Supp. 1972) which provides in relevant part as follows:

"Appeals taken on questions of law shall be heard upon assignments or error set out in the briefs of appellant before the hearing. Errors not specifically pointed out in the record and separately argued by beief may be disregarded, but the court may consider and decide errors which are not assigned or specified." (Emphasis added.)

Appellate Rule 12(A) is nearly identical in that it does not prohibit the reviewing court from dealing with "errors not specifically pointed out in the record":

> "Rule 12. Determination and judgment on appeal.
>
> "(A) Determination. In every appeal from a trial court of record to a court of appeals not dismissed, the court of appeals shall review and affirm, modify, or reverse the judgment or final order of the trial court from which the appeal is taken. The appeal shall be determined on its merits on the assignments of error set forth in the briefs required by Rule 16, on the record on appeal as provided by Rule 9, and unless waived, on the oral arguments of the parties, or their counsel, as provided by Rule 21. Errors not specifically pointed out in the record and separately argued by brief may be disregarded. All errors assigned and briefed shall be passed upon by the court in writing, stating the reasons for the court's decision." (Emphasis added.)

It appears now to be well settled law in Ohio that a reviewing court has the discretion under CODE § 2505.21 "to consider and assign errors which were not assigned or specified." Selig v. Bd of Revision, 12 Ohio App. 2d 157, 164, 231 N.E.2d 479, 485 (1967). See also, State ex rel. Smith v. Johnson, 12 Ohio App. 2d 87, 91 231 N.E. 2d 81, 84 (1967).

Generally speaking the court will exercise its discretion and consider errors not specifically assigned where such errors are found to be prejudicial, where substantial justice requires it Booth v. Shepard, 8 Ohio St. 243 (1858) (dicta) or where counsel have over-

looked a statute or decision of the court governing the case McHugh c. State, 42 Ohio St. 154, 157-158 (1884) (As will later be demonstrated both a statute and a case directly on point were overlooked entirely by counsel for both parties.) See generally 3 O Jur 2d Appellate Review § 548 (Supp. 1973).

The foregoing principles apply with even greater force where, as in the case sub judice, the questions presented for review were in fact raised by petitioner's former counsel albeit without ideal specificity. The courts have often considered errors which were not assigned except by the general statement that "other errors" existed. 3 O. Jur. 2d Appellate Review, § 551 (Supp. 1973).

In Green v. Castronova, 9 Ohio App. 2d 156, 160-161, 223 N.E.2d 641, 646 (1966) the plaintiff assigned as error the following jury charge:

> "The court charges you as a matter of law that the mere fact that an accident happened or that plaintiff received some injury is no evidence whatsoever that the defendant was negligent and no negligence may be inferred therefrom." (Court's emphasis.) Id, at 160, 223 N.E. 2d at 645

The plaintiff meant, but did not state, in this assignment of error that the trial court's failure to make a similar charge regarding plaintiff's lack of contributory negligence was prejudicial in that it allegedly created in the jury's minds the impression that plaintiff was contributorily negligent per se. As to the issue of whether the plaintiff's lack of specificity precluded the court from considering the issue, the court stated:

> "Plaintiff did not specify what was erroneous about the giving of these special charges. However, under Section 2505.21

Revised Code, this court may consider and decide errors which are not specified. Id, at 160-161; 223 N.E.2d at 646. Hettrick v. Wilson, 12 Ohio St. 136, 138 (1861) stands for the proposition that the assignment of error may be general. In Neale v. Board of Liquor Control, 160 NE.2d 352 (Ohio App. 1958) it was held unnecessary to label an assignment of error as such so long as the error is clearly set forth. It has also been held that an assignment of error that the findings and judgment of the court below are not sustained by sufficient evidence and are contrary to law is ample to raise the question as to the sufficiency of proof as to a material averment in an affidavit charging a misdemeanor. Jewett v. State, 22 Ohio L. Abs 37 (App. 1936)

Finally it was held in In re Wysong, 30 Ohio L. Abs. 316 (App. 1939), which followed several decisions of the Supreme Court of Ohio that where the Court of Appeals renders an opinion, it is presumed to have passed on all the issues. See also, Bechtold v. Ewing Admr., 89 Ohio St. 53,56 (1913); Columbus Shawnee and Hocking R.R., 76 Ohio St. 164 (1907) and Kramer v. Toledo & Ohio Central R.R., 53 Ohio St. 436, 445 (1898). Thus to the extent that the questions sought to be reviewed herein are properly raised, they were disallowed by both the Franklin County Court of Appeals, by virtue of the court's having written an opinion, and by the Supreme Court of Ohio which simply refused to certify the record.

B. Application of Law to Facts

With the liberal Ohio rules regarding the

preservation of questions on appeal in mind, let us now examine the facts of our case in order to determine how the questions raised herein were "timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari." Rule 23(1)(g) Rules of the Supreme Court of the United States.

The first question was specifically raised by petitioner's former counsel in his first Assignment of Error in the Common Pleas Brief and Appellate Court Brief. It would appear to be beyond question that this Assignment of Errors includes within it the claim that the record is devoid of evidence that CODE § 4749.06(A) was violated at all, wholly apart from the question of whether assuming arguendo CODE § 4749.06(A) was violated, the act was perpetrated "knowingly." Apart from common sense, Jewett v. State, supra; Hettrick v. Wilson, supra and Green v. Castronova, supra would appear amply to support this proposition.

The first Assignment of Error set forth in the Common Pleas Brief is sufficiently broad to encompass petitioner's second question raised herein as well. The mere statement that "the decision is against the manifest weight of the evidence" is more than sufficient to raise the point that the Findings of Fact were not supported by the testimony in the Record with the result that the Hearing Officer could not possibly have made such Findings of Fact without looking to matters outside the record. See, Jewett v. State, supra where such a general statement was held sufficient to raise the issue of whether the accident occurred on a "public road or highway" where appellant had been convicted of failing to stop

a motor vehicle after a collision on a public highway.

The third question raised herein is specifically raised by the fourth "Question of Law" appearing in both the Common Pleas Brief and the Appellate Brief.

> "Can an Administrative Hearing Examiner find that a party has willingly violated a criminal statute where such party has not been charged with such violation." (Emphasis added.)

The only means by which petitioner was "charged" was through the Notice. Accordingly, the emphasized portion of the above-quotation makes rather specific reference to the deficiency in the Notice. The fact that statement was characterized as a "Question of Law," rather than as an Assignment of Error is immaterial under the court's ruling in Neale v. Bd of Liquor Control, supra, where the appellant erroneously labeled the Assignments of Error, "Questions of Law Presented."

Furthermore, counsel for both sides overlooked CODE §119.07, setting forth the requirements for the Notice as well as one case directly on point Ohio Motor Vehicle Dealers' & Salesmen's Licensing Board v. Memphis Auto Sales, 103 Ohio App. 347, 142 N.E. 2d 268 (1957):

> "Where an automobile dealer is charged with a violation of one section of the Certificate of Motor Vehicle Title Law of which he is found not guilty, a finding of the Motor Vehicle Dealers' Licensing Board suspending such dealer for alleged violation of another section of such law upon which he was not charge is not in conformity with Section 119.07, Revised Code, a part of the Administrative Procedure Act, and such order of suspension

is invalid." (Emphasis added.) Syl. 3.

The issue regarding the defect in the Notice was also raised at several points in the Appellate Brief all of which are specifically referred to in the STATEMENT OF THE CASE portion hereof.

McHugh v. State, supra, stands for the proposition that even where an error is not raised it all will be considered by the court where counsel have overlooked a statute or decision of the court governing the case. It follows that where it has been raised and the court has ruled on the issue, it has been raised specifically since the court is required both by rule 12 (A) and CODE §2505.21 to consider all errors assigned and briefed, and since the Ohio Court of Appeals is presumed to have passed on all issued since it rendered an opinion.
In re Wysong, Supra.

It should also be noted that this Court has expressed its view that a waiver of a constitutional right is not lightly inferred. Ohio Bell Telephone Co. v. Public Utility Commission of Ohio, 301 U.S.292 (1937); D. H. Overmeyer Co. v. Frick Co., 405 U.S. 174,186 (1972)

We believe the petitioner raised the crucial constitutional issues we have set forth in our petition for a writ of certiorari although they are not artfully drawn. Petitioner's former counsel made the point his client's license was being taken for violations not set forth in the notice of proposed revocation and that the license was taken without evidence of the violation being placed in the record. Petitioner's former counsel vigorously argued that this was contrary to law.

It is axiomatic that the "law" includes the federal constitution. The Ohio courts rejected these basic arguments in their less than perfect form and we ask the Supreme Court

of the United States to accept and properly pass on these crucial issues to prevent a loss of petitioner's business without due process of law.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

There are four major reasons why this Court should grant the writ in this case:

A. WAS PETITIONER DEPRIVED OF HIS RIGHTS OF DUE PROCESS OF LAW GUARANTEED UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA BY VITURE OF THE FACT THAT THERE EXISTS ON THE RECORD NO EVIDENCE THAT THE PETITIONER KNOWINGLY FAILED TO REGISTER EMPLOYEES WITH RESPONDANT?

In Northern Pacific Ry. v. The Department of Public Works of the State of Washington, 268 U.S. 39 (1925) this Court stated the principle that an order of a state agency which is not supported by the evidence adduced at the hearing before that agency is an arbitrary act and as such constitutes a denial of due process:

> "An order based upon a finding made without evidence, The Chicago Junction Case, 264 U.S. 258,263, or upon evidence which clearly does not support it, Interstate Commerce Commission v. Union Pacific R.R., 222 U.S. 541, 547, is an arbitrary act against which courts afford relief. The error under discussion was of this character. It was a denial of due process." Id., at 45 (Emphasis added.)

See 2 Am Jur. 2d, Administrative Law, §452 (1962). Cf. Federal Radio Com. v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266 (1933) (Decided on statutory rather than constitutional grounds.)

With the rule thus in mind, let us examine the Findings of Fact and the evidence, if any, supporting such findings in the case at bar.

> The hearing officer concluded as follows:
>
> "This hearing officer finds that the licensee, Sanford S. Paris, knowingly violated the provisions of Section 4749.06(A)...." (Findings of Fact, p.7)

Included within such statement are two seperate conclusions: First that petitioner violated CODE §4749.06(A) and secondly that such violation was committed "knowingly." We shall examine the two conclusions separately.

1. That Petitioner Violated CODE §4749.06 (A)

CODE §4749.06(A) provides as follows:

> "Each private investigator shall register his employees, exclusive of clerical help, with the department, which shall compile and keep current a list of all licensees and registered employees and make it available, upon request, to any law enforcement agency."

There is, of course, no time limitation within which this section requires that employees be registered. It merely requires that they do be registered.

Since it is our contention that there is no evidence in the Record to support the above conclusion of the hearing officer, we will now proceed first to point out to this Court, with absolute specificity, those sections of the Record which are in good faith believed

to be the most damaging to the petitioner on this issue. This would be found in the direct examination of John J. Gillespie:

DIRECT EXAMINATION

By Mr. Weber:
Q "Sir, would you give us your name for the record, please?"
A "John J. Gillispie."
Q "And your current occupation?"
A "Investigator, Division of Licensing, Department of Commerce, State of Ohio."
Q "Do your duties as an Investigator for the Division of Licensing, Department of Commerce, also involve you in a status as custodian of the records for the documents of said Division?"
A "Yes, sir."
Q "And are these documents under your care, custody and control at all times during the day?"
A "Yes, sir."
Q "Mr. Gillispie, based on your status as custodian of the reocrds have you had occasion to recently review all records on file concerning General Security Services, Incorporated 923 East Broad Street, Columbus, Ohio?"
A "Yes, sir."
Q "And does your review of these records indicate that General Securities, Incorporated, is currently licensed by the Division of Licensing, Department of Commerce?"
A "Yes, sir, it is."
Q "When was this license issued?"
A "In January 1971, the 30th, I believe."
Q "January 30, 1971. Do your records indicate the status of one Sanford S. Paris in relationship to this General Security Services?"
A "Yes, sir, He is President."

Q "Is he also licensed by the Division of Licensing, Department of Commerce?"
A "He is carried on our records as a licensed applicant."
Q "When did he submit this application?"
A "January 2 or 9. I don't recall which."
Q "Of?"
A "That was December 30, 1970."
Q "December 30, 1970. Does Mr. Paris's status with the General Security Services, does this status place him in the position, as far as the Division is concerned, as being an employer?"
A "Yes, sir."
Q "In what respect? Would you please explain?"
A "He is the license holder, which means he is responsible for his employees under Chapter 4749."
Q "Have you received in recent months from the General Securities Services, and more specifically a Mr. Sanford S. Paris, a list of employees which were at that time currently employed by said General Security Services?"
A "Yes, sir. I have two lists."
Q "Could I see those, please?"
MR WEBER: "I would like to have these marked as Department's Exhibits 5 and 6."
"Thereupon, the documents last above referred to, being Lists of Employees, were marked Department's Exhibits 5 and 6 for purpose of identification herein."
Q "Mr. Gillispie, I will show you what has been marked as Department's Exhibits 5 and 6 and I will ask you if you can please identify these for us?"
A "Yes, sir. No. 5 is a letter of July 23, 1971, within the Division called a quarterly report of employees."

Q "Sir, based on the list of names that is stated on that quarterly report, and submitted to the Division in July, can you tell us in your capacity as custodian of the records of the Division of Licensing as to, first, whether the private investigator or the employer of General Security registered these employees with the Division of Licensing and, too, if some of these people are registered the approximate dates that they did register."

A "Only one was registered. That is Simon Blakely. Blakely was registered May 7, 1971. The other nine were not registered.

Q "Now, this is of the date of July --

A "23."

Q "July 23. Have some of these been registered since the date of July 23, as far as your records indicate?"

A "Yes, sir. I believe at least two have been registered since that time."

Q "But as of the date of July 23 these employees had not been registered?"

A "That is correct, sir."

Q "Will you once again state for the record as to when the General Security Services, Incorporated, was first licensed by the Division? Would you please restate that date for us at this time?"

A "They received their license on January 28, 1971."

Q "And this letter was written to you in July of 1971, is this correct?"

A "Yes, sir."

Q "Could you please state for the record and for the Hearing Examiner as to what precisely the requirement is that an employer of the licensee must meet in registering his employees. What must he do, when, under what conditions?

A "Right, sir. Within 10 days of the employment of the employee he submits two registration cards and one fingerprint card to the Division with a $5 license fee."
Q "And you have stated, have you not, sir, that as to the employees listed on the July letter, that except for one man on the list this had not been done?"
A "Yes, sir."
(Record, p. 4-8) (Emphasis added.)

Taking this to be the only testimony, and assuming arguendo, that it is wholly uncontroverted - which it is not - it is obvious that there can be no conclusion reached as to whether, as of the hearing date, there was a violation of CODE §4749.06(A).

We know, assuming the truth of the testimony, that of ten employees listed on the July 23, 1971 letter (Exhibit 5 to the Record) only one was registered as of that date and that since that date "at least two ... [had] been registered." (Emphasis added.) Whether, as of the hearing date, the other seven were registered and if so, when, are matters left wholly open to speculation.

Mr. Gillespie does admit (Record, p.10) on cross examination that all of the employees set forth on the October 5, 1971 letter (Exhibit 6 to the Record) were registered as of the hearing date; however, no where in the Record is there any indication as to whether, and if so when, the other seven men listed on Exhibit 5 to the Record were registered. Because of Gillespie's testimony on page 10 of the Record that those on Exhibit 6 were registered, these are the only seven with respect to whom there is any basis for concluding they were never registered. However to conclude that these seven were not registered as of the Hearing is

to indulge in pure speculation. This has often been held insufficient:

> "A basis in surmise, conjecture, speculation or suspicion is not sufficient, an no essential issue may be left to surmise, guess or conjecture." 2 Am Jur. 2d, Adm. Law §393 (1962).

Mr. Gillespie's entire testimony is found on pages 4 through 14 of the Record. Mr. Gillespie testified that he was the "custodian of the records." (Record, p. 4) Moreover, he was the only official of respondant who testified at the Hearing. His testimony constitutes the only basis upon which the Hearing Officer could have concluded that as of the date of the Hearing there were employees or former employees of petitioner who had never registered, i.e., that CODE §4749.06(A) had been violated. A cursory review of the Record will, it is submitted, fully support this assertion.

The testimony of John O'Keefe, Columbus Fire Department, Arson Investigation Unit, may also be of some value although it is, of course, heresay and therefore lacking in probative value. His testimony appears on pages 14 through 17 of the Record.

Mr. O'Keefe testified that he told Mr.Paris in April, 1971 that "there was no application to register John Topsail, who was actually running the security side of the business. And the other three guards in question, the applications had been submitted, but had not been passed on." (Emphasis added.)

As pointed out in Mr. Paris' testimony (Record, p.37) there was no need to register Topsail since as an administrative employee, he was exempt from registration under CODE §4749.10 (A).

Nonetheless Mr. Topsail was registered and in any event Hearing Officer Krupman's Findings of Fact do not relate to Mr.Topsail.

What is of consequence in Mr. O'Keef's testimony is his statement made in April of 1971 that the applications for three "had been submitted to the Department of Commerce but had not been passed on." (Record, p. 15) (Emphasis added.) Interestingly Mr. Gillespie testified that as of July 23, 1971 only one employee on the July 23, 1971 letter (Exhibit 5 to the Hearing) had been "registered." (Record, p.7) (We can only speculate as to whether any of the three referred to by O'Keefe were listed on the July 23, 1971 letter.)

Mr. O'Keefe's testimony illustrates the fact that in order that an employee be registered," his application must be "submitted" and "passed on." Thus although CODE §4749.06 (A) requires a private investigator to "register" his employees, it could not have defined "registered" in the same manner that John Gillespie did or else the statute would be imposing an impossible task upon the private investigators. "Register" is not defined in Chapter 4749, nor is it defined in the general definition section of the Ohio Revised Code. Since Gillespie's testimony relating to "registration" regarded the term in the "passed on" sense and since the term as used in CODE §4749.06 (A) must be construed in the "submitted" sense if it is at all to be enforceable his testimony is deserving of even less weight than otherwise would be the case. The apparent ambiguity regarding this term is further illustrated by a statement of Hearing Officer Krupman regarding Brady Knapp:

"He was never registered by the Division nor was application for registration made on his behalf." (Findings of Fact, p.3)(Emphasis added.)

Surely no one conceivably could argue that respondant would have the power to revoke petitioner's license if all applications of all employees were duly "submitted," but that since such applications had not been "passed on" by respondant, there was a failure to "register." Yet the fair inference legitimately to be drawn from Mr. Gillespie's testimony, especially when viewed in juxtapostion to that of Mr. O'Keefe, is that Mr. Gillespie regarded the word "register" in the sense of the official act of his Department of approving an employee.

It follows that the Hearing Officer's conclusion that CODE §4749.06(A) had been violated is wholly unsupported by the evidence, or, at the very least is based on evidence which "clearly does not support it. . . ." Northern Pacific Ry v. The Department of Public Works of the State of Washington, supra.

Accordingly under the dictates of the Northern Pacific Ry case, petitioner has been denied due process of law.

2. That Petitioner "Knowingly" Violated CODE §4749.06 (A)

Assuming, arguendo, that CODE §4749.06(A) was violated, the next question is whether such violation was committed "knowingly." CODE §4749.10(B)

Mr. Gillespie testified on direct examination that he apprised Mr. Paris of the necessity of registering his employees in late May or early June of 1971. (Record, p.8) He then testified on cross examination that the

conversation took place in the parking lot outside of his office. (Record, p. 9-10) He further testified on cross that the conversation took place after hours and that the statement was made "unofficially." (Record, p. 10) Mr. Gillespie further testified that he had had many "personal conversations" with Mr. Paris by telephone. He did not state, however, whether any of these conversations related to the requirement that employees be registered. (Record, p. 10) In response to a question of Hearing Officer Krupman, Mr. Gillespie admitted that he had never "sent any letters of a more formal basis regarding the lack of registration or the necessity to register employees." (Record, p. 12) Mr.O'Keefe as previously noted, testified on direct examination that he told Paris that he had been told by Gillespie that of the three guards in question, the applications had been submitted but not passed on and that Mr. Topsail had not been registered. (Record, p. 15) He also testified that Paris told him that Topsail would immediately be registered. (Record, p.17) In fact, the record is silent as to whether or not Topsail was registered. However, the Findings of Fact make no reference to any possible failure to register Topsail as being a basis for concluding that the offense was committed "knowingly"; in fact, the Findings of Fact make no reference to Topsail whatsoever.

Mr. Paris, in his direct testimony, confirmed the parking lot meeting with Mr. Gillespie. (Record, p. 36) However, Mr. Paris testified that he did not recall any discussion at that meeting regarding registration of employees. (Record, p. 36) Mr. Paris confirmed the meeting with Mr. O'Keefe and acknowledged a warning regarding Mr. Topsail.

(Record, p. 37) Mr. Paris testified on cross examination that he did not have any personal knowledge of the existence of a problem regarding registration of employees until August,1971 (when he received the first letter from respondant indicating its intention to revoke his license.) (Record,p. 42) Based upon such a Record, the Hearing Officer concluded that the violation was committed "knowingly."

The scintilla of evidence which supports such a conclusion is the controverted testimony of Mr. Gillespie that in May or June of 1971 he unofficially, after hours informed Mr. Paris of the requirement in a parking lot. Mr. Gillespie also testified that Mr. Paris received his license on January 30, 1971 (Record, p. 5), that it had come to his attention that other licensees had failed to comply with registration requirements upon occasion (Record, p. 11) and that he, himself, had only been with the Department of Commerce since March 29, 1971. (Record, p. 9) In fact, CODE §4749.06 (A), under which petitioner was charged, has only been effective since January 1, 1970. Thus it was just as likely as not that petitioner, having never received any formal warning, was totally unaware that employees were not being registered. The testimony of Mr. Gillespie on recross examination that all then current employees were registered on September 3, 1971 lends strong support to this conclusion. (Record, p. 13) Petitioner received the August 25, 1971 letter - the first formal warning - on August 26, 1971 (Record, Exhibit 1) A few days later all present employees were registered. In light of this, how likely was it that the previous failure to register was an act which was committed "knowingly?"

The lower courts failure to reverse on this ground alone is even more remarkable in view of the fact that petitioner's former counsel cited Griffin v. United States, 173 F. 2d 969 (6th Cir. 1949) which holds that "when the statute creating the offense requires that it must be knowingly committed, mere failure to comply is not enough." Id., at 970.

It would appear clear from the foregoing discussion that the conclusion that the offense was committed "knowingly" is wholly unsupported by the evidence or, at the very least, is based on evidence "which clearly does not support it . . . ." Northern Pacific Ry v. The Department of Public Works of the State of Washington, supra. It follows under the dictates of that case that the petitioner has been deprived of due process of law.

B. DID THE ACT OF THE HEARING OFFICER IN MAKING FINDINGS OF FACT BASED UPON EVIDENTIAL FACTS NOT SPREAD UPON THE RECORD DEPRIVE PETITIONER OF DUE PROCESS OF LAW GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

A leading case in this area is Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio, supra.
Justice Cardozo delivered the opinion of the court. In that case the respondant had set rates based upon a survey conducted by it. The survey was not part of the record, and its contents were not made available to the petitioner. The Supreme Court of Ohio affirmed the respondant's position. In reversing, Justice Cardozo, speaking for the Court stated:

> "The fundamentals of a trial were denied to the Appellant when rates

previously collected were ordered to be refunded upon the strength of evidential facts not spread upon the record." Id., 300 (Emphasis added.)

"Without warning or even the hint of warning that the case would be considered or determined upon any other basis than the evidence submitted, the Commission cut down the values for the years after the date certain upon the strength of information secretly collected and never yet disclosed ... Upon the strength of these unknown documents refunds have been ordered for sums mounting into millions, the Commission reporting its conclusion but not its underlying proofs. The putative debtor does not know the proofs today. This is not the fair hearing essential to due process. It is condemnation without trial." Id., at 300 (Emphasis added.)

"From the standpoint of due process - the protection of the individual against arbitrary action - a deeper vice is this, that even now we do not know the particular or evidential facts of which the Commission took judicial notice and on which it rested its conclusion." Id, at 302.

"The right to a fair hearing is one of the rudiments of fair play insured to every litigant by the Fourteenth Amendment as a minimal requirement. There cen be no compromise on the footing of convenience or expediency or because of a natural desire to be rid of harassing delay, when that minimal requirement has

been neglected or ignored." Id, at 305-06.

In the case at bar Hearing Officer Krupman concluded with respect to Earl Martin that "no registration for such man was ever made by the licensees." (Findings of Facts, p. 3) Mr. Krupman further concluded that Charles Taylor "was never registered by these licensees with the Division." (Findings of Fact, p. 3) He also concluded that Clarence Nicely "was never registered although he did provide them with his fingerprints and photograph." (Findings of Fact, p. 3) Mr. Krupman further concluded that Brady Knapp "was never registered by the Division nor was application for registration made on his behalf." (Findings of Fact, p.3)

The testimony of Earl Martin appears on pages 17-19 of the Record; that of Charles Taylor appears on pages 20-23 of the Record; and that of Brady Knapp appears on pages 28-30 of the Record. A careful review of this testimony indicates that these gentlemen had absolutely no idea whatever whether or not they had been registered. With the exception of Mr. Taylor, who did not recall whether he had turned in his photographs, all testified that they had turned in their applications, fingerprints, and photographs (Record, p. 19 as to Martin; p. 21 as to Taylor; p. 25 as to Nicely; and p. 29 as to Knapp).

Mr. Gillespie's testimony has been previously discussed in depth. All of the foregoing gentlemen were listed on the July 23, 1971 letter. Mr. Gillespie's sole testimony with respect to these gentlemen therefore consisted on his statement that of the ten employees listed on said letter, only one was registered prior to July 23, 1971 and "that at least two had been registered since that time." (Record, p. 7) Accordingly, there is

no direct reference to any of these gentlemen and there is no statement anywhere in the record that as of the Hearing date any of them had not been registered. Yet the Hearing Officer so concluded.

Furthermore, Mr. Gillespie does testify that as of the Hearing date all employees set forth in the October, 1971 letter were registered. (Record, p. 10) Brady Knapp was on that list, which appears as Exhibit 6 to the Record. Accordingly, the Finding of Fact of Hearing Officer Krupman with respect to Brady Knapp is directly contrary to the evidence adduced at the trial! There is nothing in the record which would indicate one way or the other whether Messrs. Martin, Taylor or Nicely were registered. As respects to Mr. Knapp, the testimony is to the contrary. Accordingly, the only basis upon which Mr. Krupman conceivably could have reached these Findings of Fact would be by reference to matters outside the record.

Respondant therefore has been effectively denied the right of due process of law.

Had Mr. Gillespie made a direct statement that, for example, Clarence Nicely has never been registered, petitioner would have had the opportunity to cross examine Mr. Gillespie concerning this statement, to seek to subpeona additional records of the respondant and otherwise to attempt to rebutt the statement of Mr. Gillespie. Since such statement was never made and since similar statements were never made regarding any of the other gentlemen in question, petitioner was effectively denied his right to know the witnesses and the evidence. See 2 Am. Jur. 2nd, Adm. Law §418 (1962)

It would appear clear that the act of respondant herein in revoking the license of the

petitioner is of no less magnitude than was the act of the Public Utilities Commission of Ohio in requiring Ohio Bell Telephone Co. to refund huge sums of money.

The case would appear to fall squarely within the reasoning of the Ohio Bell Telephone Co. case with the result that the conclusion inevitably follows that the petitioner was, as a result of the act of Hearing Officer Krupman in making findings of fact based on matters not upon the record, effectively denied its right of due process of law.

C. DID THE FAILURE OF THE RESPONDANT'S NOTICE OF INTENTION TO REVOKE PETITIONER'S LICENSE TO INCLUDE DIRECT REFERENCE TO THE STATUTE AND REGULATION UNDER WHICH SUCH LICENSE WAS SOUGHT TO BE, AND ULTIMATELY WAS REVOKED, DEPRIVE PETITIONER OF DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

The case of Missouri, ex rel Hurvitz v. North, 271 U.S. 40 (1925) involve a statute which authorized the local board of health to revoke the license of a physician upon the ground that he unlawfully produced abortions. The case dealt with the issue of whether or not the statute was reasonable and therefore observed the minimal standards of due process of law. In concluding that this was the case, the court, among other things stated that the doctor in question had been given "reasonable notice and specification of the charges." Id., at 40. Thus, the right to a specification of the charges is part of what is guaranteed to every litigant by the due process clause of the Fourteenth Amendment of the Constitution. This especially so where there is a statute

or rule which provides for the manner and form of notice. 2 Am. Jur. 2d, Adm. Law §360 (1962) Cf. Morgan v. United States, 304 U.S. 1, 18 (1937), which although decided under federal law and thus upon statutory rather than constitutional grounds, gives the policy reasons supporting the fair notice requirement:

> "But a 'full hearing' - a fair and open hearing - requires more than that. The right to a fair hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of opposing party and to meet them." (Emphasis added.)

In the case at bar, a notice provision is governed by CODE §119.07 which provides in relevant part as follows:

> "Such notice . . . shall include the charges or other reasons for such proposed action, the law or rule directly involved . . . ."(Emphasis added.)

The Notice (Exhibits 1 and 2 to the Record) provides in relevant part as follows:

> "You are hereby notified that the Department of Commerce, Division of Licensing on August 24, 1971, after giving due consideration to your present status, proposes under authority of Section 4749.04(A) and 4749.04(C), of the Ohio Revised Code, to revoke the Private Investigator license as issued to General Security Services, Inc. and/or Sanford S. Paris, and specifically for failure to comply with Section 4749.06 and Section 4749. 03(A) (2) of the Ohio Revised Code." (Emphasis added.)

As previously noted the charges relating to CODE §4749.03 (A) (2) were by stipulation dropped. (Record, p. 2)

Thus the respondant was charged specifically with violating CODE §4749.06. He was not charged with violating CODE §4749.10 (B) nor was he charged with violating Commerce Regulation COc-5-11. A case directly on point is Ohio Motor Vehicle Dealers' & Salesmen's Licensing Board v. Memphis Auto Sales, supra. In that case the appellee had been charged pursuant to CODE §119.07 as follows:

> "You are hereby notified that a hearing will be conducted before the Board*** at 1:30 P.M. on November 21, 1955 to determine whether you have violated Section 4505.03,*** of the Revised Code***." Id. at 357
>
> "The decision of the board recites the following findings of fact:
>
> (1) That Jack Kohl purchased a 1955 Oldsmobile on or about July 1, 1955 from the Memphis Auto Sales and received the certificate of title on August 29, 1955.
>
> The board then concluded that by reason of the foregoing finding the selling of a 1955 Oldsmobile by the Memphis Auto Sales to Jack Kohl on July 1, 1955, and the failure to deliver a certificate of title to him until August 29, 1955, was in violation of the Certificate of Title Law of the state of Ohio, Sections 4505.03 and 4505.06 of the Revised Code.
>
> "Section 4505.03 of the Revised Code, reads:

No person, except as provided in Section 4505.05 of the Revised Code, shall sell or otherwise dispose of a motor vehicle without delivering to the purchases or transferee thereof a certificate of title with such assignment thereon as is necessary to show title in the purchaser; nor shall any person purchase or otherwise acquire a motor vehicle without obtaining a certificate of title for it in his name in accordance with Sections 4505.01 to 4505.19, inclusive, of the Revised Code.

"It is obvious from a comparison of the notice and Section 4505.03 of the Revised Code that the Memphis Auto Sales did not violate the section under which it was charged by the notice served on it by the board. It is also obvious that the conviction was had under Section 4505.06, Revised Code, which provided that a certificate of title shall be filed within three days of the delivery of such motor vehicle. It is equally obvious the appellant did violate this section. However, it was never so charged.

"While pleadings interposed in an administrative proceeding do not require the exacitude of those filed in a judicial proceeding, it is quite certain that the board did not comply with the requirements of Section 119.07, Revised Code, a part of the Ohio Administrative Procedure Act. This section provides in part: *** such

notice *** shall include the charges or other reasons for such proposed action, the law or rule directly involved ***

The quoted portion of Section 119.07 Revised Code, is concerned with the contents of notice of hearing when an agency is seeking to suspend a license.

Because the appellant was charged with a violation of one section of the Certificate of Motor Vehicle Title Law, and the findings of the board and order promulgated thereunder were for the violation of another section of such law, it is our opinion that the judgment of the Court of Common Pleas upholding the ruling of the board should be reversed on the ground that the board did not comply with the procedure set forth in Section 119.07 of the Revised Code, and further for the reason that a certificate of title had been delivered to the buyer prior to the filing of the charge." Id., at 357-59. (Emphasis added.)

It is difficult to imagine a case being more fully on point than this one. Clearly in the case at bar CODE §119.07 was not complied with. This constituted a fundamental denial of due process to the petitioner in that he was denied the fundamental right to know the charges made against him.

D. DO THE FOREGOING ISSUES CONSTITUTE MATTERS OF GREAT PUBLIC IMPORTANCE?

Various state regulatory agencies have incredible and often almost totally unchecked power. This is stated perhaps most eloquently by Justice Cardoza in his Ohio Bell opinion

as follows:

> "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. [Cites omitted] Indeed, much that they do within the realm of administrative descretion is exempt from supervision if these restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard'[Cite omitted] of a fair and open hearing to be maintained in its integrity." Id., at 304 (Emphasis added.)

A brief perusal of the supplement of Ohio Revised Code, Volume 47 reveals the direction in which the state of Ohio is going. In 1965 Landscape Architects first came under this state's watchful eye. CODE §4703.30 to § 4703.49 Effective December 31, 1971 a state board of pharmacy was created. CODE §4729.01. Effective September 22, 1972 phychologists came under state scrutiny. CODE Chapter 4732. Effective November 25, 1969 hearing aid dealers became subject to state licensing requirements. CODE Chapter 4747. As previously noted, private investigators became subject to state licensing requirements effective January 1, 1970. CODE Chapter 4749. Nursing home administrators were required to be licensed effective April 12, 1970. CODE Chapter 4751.01.

These are only a few very recent examples of what is happening in one state.

We are today at a point whereby there are less and less areas in which a man can lawfully carry on a business to support himself and his family without being subjected to licensing requirements of a state or agency thereof. Accordingly, this case does not effect just one man, but rather involves the entire nation because so long as state regulatory agencies are permitted to revoke licenses almost at will and wholly without regard to the fundamental fairness required by the due process clause of the Fourteenth Amendment, no person's means of livelihood is safe.

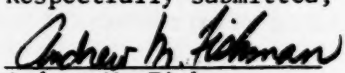
Surely in a case such as this where the fundamental fairness required by the due process clause was so blatently disregarded and where as a result petitioner's ability to earn a living hinges upon no more than a prayer that this absolute power of the Ohio Department of Commerce be exercised with compassion, a question of great public importance is presented. The unchecked powers of state regulatory agencies whose dictates are rubberstamped by the courts of their state must be reviewed. Unless this petition for a writ of certiorari is granted, there will be no such review.

CONCLUSION

Petitioner was denied his right to due process of law by virtue of receiving a notice which did not apprise him of the charges against him, by virtue of the Hearing Officer making Finding of Fact on evidence not spread upon the Record and by virtue of his reaching Conclusions of Law chich were wholly unsupported by the evidence. To permit this type of activity to continue is to give free

reign to state regulatory agencies and to disregard the fundamental fairness required to be extended to every citizen by the due process clause of the Fourteenth Amendment of the Constitution of the United States of America.

Respectfully submitted,



Andrew M. Fishman
THOMPSON, SWOPE, BURNS & BISWAS
Counsel for Petitioner

APPENDIX A

BEFORE THE DEPARTMENT OF COMMERCE, STATE OF OHIO
DIVISION OF LICENSING

- - -

In the Matter of :
Sanford S. Paris and :
General Security Services :
Inc. :

- - - - -

PROCEEDINGS

Before Honorable Victor S. Krupman, Hearing Officer, Department of Commerce, Division of Licensing, at the Offices of the Department, Room 207, 366 East Broad Street, Columbus, Ohio, on Thursday, October 21, 1971.

- - -

APPEARANCES:

William J. Brown, Attorney General of Ohio; by Thomas Weber, Assistant Attorney General,
On behalf of the Division of Licensing.

Anthony R. Zingarelli and Ted H. Finesman, Attorneys at Law, 16 East Broad Street, Columbus, Ohio,
On behalf of Sanford S. Paris and General Security Services, Inc.

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- - -

THURSDAY MORNING SESSION,
October 21, 1971

HEARING OFFICER KRUPMAN: I thing we can call this hearing to order. Let the record show that this is a hearing conducted by the Department of Commerce, Division of Licensing. Victor S. Krupman is the Hearing Officer presiding. And the matter concerns Mr. Sanford S. Paris and General Security Services, Inc. Representing Mr. Paris is Mr. Anthony Zingarelli.

MR. ZINGARELLI: Yes. Anthony Zingarelli, 16 East Broad Street, Columbus, Ohio, 43215, and Ted H. Finesman, 16 East Broad Street.

HEARING OFFICER KRUPMAN: And also present is Mr. Sanford Paris.

Representing the Agency, Mr. Weber.

MR. WEBER: Tom Weber

HEARING OFFICER KRUPMAN: Of the Attorney General's office, Assistant Attorney General.

MR. WEBER: Yes.

HEARING OFFICER KRUPMAN: I believe there are some preliminary stipulations that the parties have agreed upon. Would one of you like to state them for the record?

MR. WEBER: Mr. Hearing Examiner, I think that each of us will stipulate certain things into the record. [1] On our part it has

been stipulated between counsel for the Division and counsel for the Licensee that Mr. Paris did receive the notices of hearing, first one of which was sent on August 25, 1971, second of which was sent on September 21,1971. It is also stipulated that Mr. Paris has been informed of the time and place of the hearing and that the date of October 20 at 10:00 A.M. was agreed upon by the parties as being the time and place for this hearing.

MR. ZINGARELLI: That is correct.

MR. WEBER: I have no further stipulations on my part.

HEARING OFFICER KRUPMAN: May I ask, for my own edification, is the notice that has been received available for the record?

MR. WEBER: Yes. I will offer these into the record so that they will be made a part of the record.

HEARING OFFICER KRUPMAN: All right. Mr. Zingarelli.

MR. ZINGARELLI: It is further stipulated that even though the notices sent covered other sections, that this hearing will be limited to any alleged violations of Section 4749.06, Section A.

HEARING OFFICER KRUPMAN: Is this agreed to by the State, Mr. Weber?

MR. WEBER: Yes, sir, it is. [2]

HEARING OFFICER KRUPMAN: Is the stipulation agreed to by Mr. Paris?

MR. ZINGARELLI: Yes, Your Honor.

HEARING OFFICER KRUPMAN: Would you go ahead and proceed, gentlemen.

MR. WEBER: At this time, sir, I would like to offer, to be made as a part of the record for the sake of the record, a copy of the notice of hearing sent to Mr. Sanford S. Paris on August 25, 1971. This first

letter will be marked as Department's Exhibit 1.

As Department's Exhibit 2 I would like to offer a further notice of hearing which specified the charges in more detail. This was sent on September 21, 1971 to Mr. Paris. Both of these letters have return receipts attached.

Also as a part of the record I would like to submit a letter by Mr. Ted H.Finesman on October 1, which stated that the first proposed hearing date of October 7,1971 was not agreeable and that any time after October 15, 1971 would be agreeable if advance notice was given. That is Department's Exhibit 3.

And as Exhibit 4 I would like to offer a confirmation letter sent on October 18 to Mr. Zingarelli confirming the time and place of the hearing, sent by the Chief of the Division, Douglas M. Russell.

I would like to have these marked and submitted [2a] into the record please.

MR. ZINGARELLI: May I see them?

MR. WEBER: However, it is understood that the value of these notices is limited by the stipulations as made. They are placed in the record solely to have them available and they are being conditioned by the stipulations.

MR. ZINGARELLI: With that limitation I have no objection.

- - -

Thereupon, the documents last above referred to, being Letters, were marked Department's Exhibits 1, 2, 3 and 4 for purposes of identification herein.

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MR. WEBER: I would now like to call John Gillispie to the stand.

HEARING OFFICER KRUPMAN: Before you go any further, is there any opening statement that anybody would like to make or any opening motions?

MR. WEBER: I have no opening statement.

HEARING OFFICER KRUPMAN: Whatever you would like to say, Mr. Zingarelli.

MR. ZINGARELLI: I will reserve.

HEARING OFFICER KRUPMAN: Fine. You will have adequate time to state your piece at any time. I thought perhaps you might want a motion that you had in mind or [3] opening statement. Please proceed.

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JOHN J. GILLISPIE

Called as a witness on behalf of the Department being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Weber:

Q Sir, would you give us your name for the record, please?

A John J. Gillispie.

Q And your current occupation?

A Investigator, Division of Licensing, Department of Commerce, State of Ohio.

Q Do your duties as an Investigator for the Division of Licensing, Department of Commerce, also involve you in a status as custodian of the records for the documents of said Division?

A Yes, sir.

Q And are these documents under your care, custody and control at all times during the day?

A Yes, sir.

Q Mr. Gillispie, based on your status as custodian of the records have you had occasion to recently review all records on file concerning General Security Services, Incorporated, 923 East Broad Street, Columbus, Ohio? [4]

A Yes, sir.

Q And does your review of these records indicate that the General Securities, Incorporated, is currently licensed by the Division of Licensing, Department of Commerce?

A Yes, sir, it is.

Q When was this license issued?

A In January 1971, the 30th, I believe.

Q January 30, 1971. Do your records indicate the status of one Sanford S. Paris in relationship to this General Security Services?

A Yes, sir. He is President.

Q Is he also licensed by the Division of Licensing, Department of Commerce?

A He is carried on our records as a licensed applicant.

Q When did he submit this application?

A January 2 or 9. I don't recall which.

Q Of?

A That was December 30, 1970.

Q December 30, 1970. Does Mr. Paris's status with the General Security Services, does this status place him in the position, as far as the Division is concerned, as being an employer?

A Yes, sir.

Q In what respect? Would you please explain? [5]

A He is the license holder, which means he is responsible for his employees under Chapter 4749.

Q Have you received in recent months from the General Securities Services, and

more specifically a Mr. Sanford S. Paris, a list of employees which were at that time currently employed by said General Security Services?

A Yes, sir. I have two lists.

Q Could I see those, please?

MR. WEBER: I would like to have these marked as Department's Exhibits 5 and 6.

- - - - - - - - -

Thereupon, the documents last above referred to, being Lists of Employees, were marked Department's Exhibits 5 and 6 for purposes of identification herein.

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Q Mr. Gillispie, I will show you what has been marked as Department's Exhibits 5 and 6 and I will ask you if you can please identify these for us?

A Yes, sir. No. 5 is a letter of July 23, 1971, within the Division called a quarterly report of employees.

Q Sir, based on the list of names that is stated on that quarterly report, and submitted to the Division in July, can you tell us in your capacity as custodian of the records of the Division of Licensing as to, first, whether the private investigator or the employer of General Security [6] registered these employees with the Division of Licensing and, too, if some of these people are registered the approximate dates that they did register.

A Only one was registered. That is Simon Blakely. Blakely was registered May 7, 1971. The other nine were not registered.

Q Now, this is of the date of July--

A 23.

Q July 23. Have some of these been registered since the date of July 23, as far as your records indicate?
A Yes, sir. I believe at least two have been registered since that time.
Q But as of the date of July 23 these employees had not been registered?
A That is correct, sir.
Q Will ycu once again state for the record as to when the General Security Services, Incorporated, was first licensed by the Division? Would you please restate that date for us at this time?
A They received their license on January 28, 1971.
Q And this letter was written to you in July of 1971, is this correct?
A Yes, sir.
Q Could you please state for the record and for the Hearing Examiner as to what precisely the requirement is [7] that an employer or the licensee must meet in registering his employees. What must he do, when, under what conditions?
A Right, sir. Within 10 days of the employment of the employee he submits two registrations cards and one fingerprint card to the Division with a $5 license fee.
Q And you have stated, have you not, sir, that as to the employees listed on the July letter, that except for one man on the list this had not been done?
A Yes, sir.
Q Mr. Gillispie, in your capacity, either formally or informally, have you ever had occasion to speak personally with Mr. Sanford Paris prior to this date?
A Yes, sir.
Q In these conversations with Mr. Paris did you ever apprise him of the necessity of

registering his employees?
A Yes, sir.
Q Do you remember approximately when you told him of this requirement?
A It would have been either late May or early June. The exact date I don't recall.
Q What did he state to you at that time?
A That he would talk to one of his employees concerning that.

MR WEBER: I don't believe I have any further questions at this time. [8]

MR. ZINGARELLI: May I proceed?

HEARING OFFICER KRUPMAN: I have a question. To straighten me out, have both of these been discussed? Two were marked, but only one discussed.

MR WEBER: I only asked questions as to 5. Exhibit 6 was the other quarterly report of October which is not quite as relevant to the time period that we are involved in.

HEARING OFFICER KRUPMAN: Thank you. Please proceed, Mr. Zingarelli.

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CROSS EXAMINATION

By Mr. Zingarelli:
Q Mr. Gillispie, how long have you been with the Licensing Division?
A Since March 29, 1971.
Q Now, you state that you talked to Mr. Paris in May of 1971, is that correct?
A Yes, sir.
Q And how did you talk to him, over the telephone?
A No, sir. In person.
Q In person?
A Yes, sir.
Q Where did you talk to him, then?
A In the parking lot outside of 33

North Grant. [9]
Q 33?
A Our office.
Q And how was it -- did you call him into your office?
A I called him unofficially.
Q And he met you in the parking lot?
A Yes, sir. The office was closed.
Q And at that time you unofficially informed him that the employees weren't being properly registered, is that your testimony?
A Yes, sir.
Q And is that the only time you ever talked to Mr. Paris?
A Oh, no, sir. I have had many telephone conversations, personal conversations with Mr. Paris.
Q Personal conversations?
A Yes, sir.
Q Do you have a list of Mr. Paris's current employees?
A As of October 5, yes, sir.
Q And have those employees all been registered?
A As of this time, yes, sir.
Q In other words, all employees currently employed by Mr. Paris to your knowledge are now properly registered?
A Yes, sir. To the best of my knowledge. [10]
Q Now, in your capacity, Mr. Gillispie, as Investigator do you check the records of all of the licensees in this field in connection with the proper reporting of registration?
A As much as physically possible, sir.
Q Has it come to your attention that other licensees have failed to comply with this section?
A Yes, sir, on occasion.

Q Isn't it a fact that this section has been more honored by its lack of compliance on the part of the licensees?

MR. WEBER: I object to that question, sir. I don't see that it has any relevance to the issues at hand.

HEARING OFFICER KRUPMAN: Your objection is sustained.

MR. ZINGARELLI: No further questions.

HEARING OFFICER KRUPMAN: Before you go, Mr. Gillispie, I would like to have something straightened out. Do you recall what day of the week this meeting in the parking lot took place?

THE WITNESS: I can only guess, sir. I would assume a Wednesday or Thursday.

HEARING OFFICER KRUPMAN: Was it a week day, not a weekend?

THE WITNESS: No, sir. At that time I was going home every Friday. I didn't live in town. I never [11] stayed in town for the weekend.

HEARING OFFICER KRUPMAN: The office was closed because it was the end of the day?

THE WITNESS: Yes, sir. 5:00 o'clock.

HEARING OFFICER KRUPMAN: And you said you had spoken to Mr. Paris on occasions regarding the registration of employees. Had you sent any letters of a more formal basis regarding the lack of registration or the necessity to register employees?

THE WITNESS: No, sir.

MR WEBER: I have a question or two on redirect.

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REDIRECT EXAMINATION

By Mr. Weber:

Q Mr. Gillispie, it has been testified to by you that as of this time the employees, as far as your records indicate, are currently registered. Do your records indicate as to the approximate date that these registrations were had? I don't mean each one, but just a general time span in which these employees were registered.

A Yes, sir. Beginning September 3, 1971.

Q In other words, none of the employees except for the one earlier noted were registered prior to September 1971. Is this so?

A I believe the one man from the July 8th was. [12]

Q I said one man you testified to earlier. But aside from the one man, the other employees on that list were not registered prior to September 1971?

A That is correct.

MR WEBER: Thank you. I don't have any other questions.

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RECROSS EXAMINATION

By Mr. Zingarelli:

Q Now, you testified that the employees that were registered were registered approximately the 3rd of September, is that correct?

A Yes, sir.

Q And are you aware of when those employees were hired?

A Just one I have personal knowledge, sir.

Q And when was the one that you are aware as to when he was hired, hired?

A The 24th of July, 1971.

Q And who was that one individual?

A Peregoy. I don't know the full name offhand.

MR ZINGARELLI: All right. No further questions.

MR WEBER: Nothing further of this witness. [13]

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JOHN O'KEEFE

Called as a witness on behalf of the Department, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Weber:

Q Sir, would you please give us your name and your occupation for the record?

A Inspector John O'Keefe, Arson Investigator, Columbus, City of Columbus.

Q Sir, in your capacity as an arson investigator for the Police Department of the City of Columbus have you had occasion to have conversations with one Sanford S. Paris of the General Security Services, Incorporated, 923 East Broad Street, Columbus, Ohio?

A My capacity as arson investigator is with the Fire Department.

Q I'm sorry. Fire Department.

A Yes, I have talked to Mr. Paris.

Q In the course of these conversations did you have occasion to make any statement to Mr. Paris concerning the registration of his employees or the employees of the General Security Services with the Department of Commerce, Division of Licensing?

A Yes.

Q What were these statements? [14]

MR. ZINGARELLI: Objection. I suggest that he set the time of these conversations.

MR WEBER: I will in the course of my question. I will set the time of the conversations if that will please counsel. I think it should be in the record anyway.

HEARING OFFICER KRUPMAN: I will overrule the objection provided --

MR. WEBER: I will set the time.

Q What was the date of the conversation with Mr. Paris concerning the registration of his employees?

A The exact date I don't remember. Had no reason to remember. Just trying to give Mr. Paris some information. But it was approximately the first part of April.

Q Of 1971?

A Yes.

Q What did you state to him concerning the registration of his employees?

A I stated that I had been up to talk to Mr. Gillispie at the Commerce Department to check the background investigation of records on some of his employees suspected of fire. And it was pointed out at this time that there was no application to register John Topsail, who was actually running the security side of the business. And the other three guards in question, the applications had been submitted, but had not been passed on. And I informed him that he would have to, according to the rules of the Department of Commerce, would [15] have to have a letter with his contract stating to the people that hired his guards that these guards had not been fully licensed yet and that they would have to know this when they hired these people. And that Topsail would have to be registered.

MR ZINGARELLI: Objection, Your Honor. I move that the last part of the answer regarding letters to the customers of the General Security be stricken because it is not relevant or material. It is not in issue. In other words, he stated that application had been made for these people for registration, and that is the only issue, by stipulation, which we are to concern ourselves with here, whether or not the registration of these employees was made.

HEARING OFFICER KRUPMAN: I think the testimony was that he was telling of his conversation and in the course of his conversation he indicated to Mr. Paris that further letters would be necessary from people who used these investigators, I think, in conjunction with the original applications. And I would like to admit this statement, and your exception is noted. And if the statement coincides with the particular section that we are talking about it, or course, will be considered. If what you say is true, then it will have no affect anyway.

MR. ZINGARELLI: All right. [16]

Q Did Mr. Paris make any statement to you at the conclusion of your comments concerning registration of his employees, that you can remember?

A He stated that he would send Topsail down right away to start his papers through, get him registered.

HEARING OFFICER KRUPMAN: Could you spell Topsail?

THE WITNESS: The spelling I had on it was (spelling) T-o-p-s-a-i-l.

MR. WEBER: I don't believe I have any other questions.

MR. ZINGARELLI: No questions, Your Honor.

MR. WEBER: I have nothing further of this witness.

HEARING OFFICER KRUPMAN: Thanks very much, Mr. O'Keefe.

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EARL LAWRENCE MARTIN

Called as a witness on behalf of the Department, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Weber:

Q Sir, would you please give us your name for the record and your current occupation?

A Earl Lawrence Martin. [17]

Q And your current occupation?

A Right now? At present I work at Westinghouse Electric Corporation.

Q Have you had occasion in the past to work for General Security Services, Incorporated, 923 East Broad Street, Columbus, Ohio?

A Yes, sir.

Q Between what dates did you work for this Security Services firm?

A I think I went there around, oh, I think it was around March some time.

Q March of what year, Sir?

A '71. And I was there until, oh, about the 20th of August.

Q 1971?

A True.

Q Could you please tell us in fairly abbreviated form as to what your duties were with General Security Services?

A When I first went to work for him I was a security guard, and I held that position until, oh, about a month and a half or two months before I was discharged down here. I did become a First Lieutenant with the company. I was making up a schedule of the men, where they was working, their time. And I used to go out and check the post at night, and any of [18] our clients, used to get in contact with them over anything that would happen or various changes made on the jobs.

Q Mr. Martin, when you were hired by General Security Services, Incorporated, did you submit to your employer fingerprints, photographs, and a $5 fee?

A I submitted the fingerprints, photographs, but I did not give them the $5 fee.

Q When did you submit these prints and photograph, do you remember offhand?

A Well, I got called down there by Capt. Topsail. And I had filled out an application prior to my employment down there and was never called. And one day I was sitting at home and Capt. Topsail did call me and they needed a man immediately. I was put on a location. And I suppose it was about, oh, a week or 10 days after I went to work for them I gave them the fingerprints and stuff.

MR. WEBER: I don't believe I have any other questions.

MR. ZINGARELLI: No questions.

HEARING OFFICER KRUPMAN: Thank you very much, Mr. Martin. Thanks very much for coming down. [19]

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CHARLES TAYLOR

Called as a witness on behalf of the Department, being first duly sworn, was examined and

testified as follows:

DIRECT EXAMINATION

By Mr. Weber:
Q Sir, would you please give us your name for the record?
A Charles Taylor.
Q And your current occupation?
A I am welder at Ohio Steel Fabricators.
MR. ZINGARELLI: I missed the name.
THE WITNESS: Charles Taylor.
Q And you are currently a welder, is that right, sir?
A Yes.
Q Sir, have you in the past ever been associated with General Security Services, Incorporated, 923 East Broad Street, Columbus, Ohio?
A Yes, sir.
Q What were the dates between which you were employed by the General Security Services?
A I haven't any idea, you know.
Q Well, what year, this year, last year?
A It was this year.
Q Do you remember approximately when you were first [20] employed, the season of the year, the time of the year?
A Well, that was about like spring or so.
Q Spring 1971?
A It wasn't bad out.
Q Approximately how long were you in the service of General Security Services?
A I think about three or four months or so. Maybe a little longer. I don't really know exactly.
Q Mr. Taylor, when you were employed by General Security Services were you ever

asked to submit your fingerprints, photographs and a $5 fee to your employer?
A Well, I was asked fingerprints and photographs, but not $5.
Q Did you do this?
A I gave them my fingerprints. I don't think I gave a photograph.
Q Do you remember approximately how long it was after you were employed that you first gave them your fingerprints? Was it long after you were employed, was it almost immediately?
A Well, it wasn't immediately. It was about maybe a month and a half or so.
Q A month and a half after you were employed?
A Uh-huh.
MR. WEBER: I don't have any other questions. [21]

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CROSS EXAMINATION

By Mr. Zingarelli:
Q Who was your immediate supervisor during the course of your employment?
A Over at General Security?
Q Yes.
A Mr. Paris was.
Q Mr. Paris was the President?
A Right.
Q But who was your boss, the guy directly over you?
A Well, there was a Lt. Martin and Lt. White.
Q Now, who asked you for your fingerprints and this information that you testified to?
A They just said I had to have it.

Q Who is they?
A Lt. White.
Q Lt. White. And Lt. Martin?
A Right.
Q And you submitted the information and fingerprints and photographs to them, is that right?
A I didn't have no photographs.
Q You never did get the photographs.
A No.
Q Did they keep asking you for them? [22]
A No. They didn't keep asking me for them. They asked me a couple times. I didn't get a chance to go down and get them. I work and didn't have a chance. I didn't have a chance to go down and get them.
Q Did Mr. Paris ever talk to you about these photographs?
A No.

MR. ZINGARELLI: No further questions.

MR. WEBER: Nothing further.

HEARING OFFICER KRUPMAN: I would like to ask one question. Did you state in what capacity you worked when you worked for Mr. Paris?

THE WITNESS: I don't understand the question.

HEARING OFFICER KRUPMAN: What duties did you do?

THE WITNESS: Well, I just guarded the place. Walked around, you know, made sure everything was all secure and checked the doors and everything.

HEARING OFFICER KRUPMAN: What place?

THE WITNESS: I worked for Carousel and Fox and Hounds. And I worked at Retail Merchants, too.

HEARING OFFICER KRUPMAN: Any further questions?

MR. WEBER: Nothing further, sir.
MR. ZINGARELLI: Nothing further.
HEARING OFFICER KRUPMAN: Thanks, Mr. Taylor. You are excused. [23]

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CLARENCE NICELY

Called as a witness on behalf of the Department, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Weber:

Q Sir, would you please give us your name and current occupation for the record?

A Clarence Nicely, (spelling) N-i-c-e-l-y.

Q And your current occupation?

A I work at Kimball Glass, Owens-Illinois.

Q You currently work for General Security Services, 930 East Broad?

A Yes, sir.

Q And so then you have more than one job?

A 923.

Q I'm sorry, 923 East Broad. And you work for them right now, too?

A No.

Q You don't work for them now?

A No.

Q But you have worked for them in the past?

A Yes, sir.

Q Could you give us the approximate dates of the period between which you worked?

A Let's see. Started in June and, I think I left [24] in July.

Q And so you were there for --
A I would say about a month.
Q About a month. During that time period did you submit fingerprints, photographs and a $5 fee?
A Not no $5 fee, but I did submit fingerprints and my photograph.
MR. WEBER: I don't think I have any other questions.

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CROSS EXAMINATION

By Mr. Zingarelli:
Q Who did you submit these fingerprints and photograph to?
A We gave them to the secretary.
Q The girl in the office?
A Right.
Q Who asked you to give them to her?
A Who asked us to give them to her? Lt. Martin.
MR. ZINGARELLI: No further questions.
MR WEBER: I have nothing further. [25]

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MICHAEL E. STIRES
Called as a witness on behalf of the Department, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Weber:
Q Sir, will you please give us your name, please?
A Michael E. Stires, (spelling) S-t-i-r-e-s.
Q And your current occupation, sir?

A I work for the General Security and I work for the State Highway Department.

HEARING OFFICER KRUPMAN: State Highway Department?

THE WITNESS: Yes, sir.

Q And you are currently employed, though, by General Security Services?

A Uh-huh.

Q What do you do for them, sir?

A I am a security guard.

Q You are a security guard?

A Right.

Q Approximately how long have you been employed by General Security?

A Roughly, I think it is, about three months.

HEARING OFFICER KRUPMAN: Three months?

THE WITNESS: Two, three months. [26]

Q At the time that you were first employed by General Security did you submit fingerprints, photographs and a $5 fee?

A Fingerprints I got from the Police Department. I submitted photograph, and I was told at that time a $5 fee would be taken.

Q Taken out of your salary?

A Yes.

Q Do you remember approximately when you submitted this $5 fee?

A No. I have no idea.

Q But you did submit it?

A Uh-huh.

MR. WEBER: I have no further questions.

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CROSS EXAMINATION

By Mr. Zingarelli;
Q You testified that you have been working a couple of months. Is that approximately from the first of September?
A I have no idea when I started.
Q You don't really know?
A No, I don't really know.
MR. ZINGARELLI: All right. No further questions.
MR. WEBER: Nothing further.
HEARING OFFICER KRUPMAN: Next witness. [27]
MR. WEBER: I have one more witness.

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BRADY KNAPP

Called as a witness on behalf of the Department, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Weber:
Q Sir, would you please give us your name for the record?
A Brady (spelling) B-r-a-d-y, Knapp (spelling) K-n-a-p-p.
Q And your occupation, sir?
A Right now service station attendant.
Q I am sorry, what?
A Service station attendant.
Q Are you currently employed by General Security Services, Incorporated?
A I was until two or three weeks ago.
Q So you were in the past, or in the past you have been employed by General Security?

A Yes.
Q Approximately when did you start working for General Security?
A June 21, I believe.
Q What duties did you perform for General Security? [28]
A General guard watch.
Q Watch guard, is that what you are saying?
A Yes.
Q Were you asked by General Security Services to submit fingerprints, photographs and a $5 fee?
A I was asked for fingerprints and, yes, police check.
Q And you submitted these to them?
A Yes.
Q Do you remember approximately how long after you were employed that you submitted these documents?
A Six weeks or two months, something like that.
MR. WEBER: Thank you. I don't have any other questions.

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CROSS EXAMINATION

By Mr. Zingarelli:
Q When did you begin your employment for General Security?
A I worked my first shift June 21 as near as I remember.
Q And who was your supervisor at that time?
A Lt. Martin.
Q And did he ask you for these fingerprints and photographs and application and et cetera? [29]

A He might have said something about it. I am not sure.
Q Could you speak just a little louder.
A He might have said something to that effect. I am not too sure.
Q You wouldn't deny, then that he did ask you for these items?
A No. As far as possibilities, he probably did.
Q You say that it took four or five weeks for you to get them to him, is that right?
A Approximately, yes.

MR. ZINGARELLI: No further questions.

HEARING OFFICER KRUPMAN: Do you have anything else?

MR WEBER: We have nothing further.

HEARING OFFICER KRUPMAN: You say you started June 21. Is that 1971?

THE WITNESS: Yes. As near as I remember it, it was June 21 when I worked my first shift.

HEARING OFFICER KRUPMAN: Thank you very much, Mr. Knapp. You are excused. Thanks for coming.

MR. WEBER: I have nothing further.

MR. ZINGARELLI: You rest?

MR. WEBER: Yes.

MR. ZINGARELLI: At this time I would like to [30] make a motion if I may.

HEARING OFFICER KRUPMAN: Please.

MR. ZINGARELLI: At this time I would like to move that the complaint be dismissed because almost every witness has testified that he did some time or another make an application for registration. And the testimony has been uniform that there was a course of conduct on the part of General Security to comply with the statute.

Now, by stipulation we have confined this hearing to a violation of Section 4749.06 (A). That's Section (A). And this section does not set any time for the submission of the registration by General Security or the Licensee to the Department of Commerce.

That is the first part of my motion. And if the Court sustains it, why, I won't have to go into any further.

HEARING OFFICER KRUPMAN: Well, at this time, Mr. Zingarelli, I would like to take your motion under consideration and hear your second motion, and perhaps hear more. Because what you have indicated I think is going to take some checking on my part of names on some of the exhibits and the testimony, and I don't want to take up our time to do that right now.

MR. ZINGARELLI: Well, the second part of my motion is it appears to me that even if Section 4749.06,[31] Section (A) is violated, which I don't admit it has been, but for the purposed of this motion we may assume it, there doesn't seem to be any provision in the statute for penalty for the violation of this section by itself. And a fast review of Section 4749.04 doesn't set forth any. And I don't know of any other place in the statute which does except possibly the criminal provision, and that is not in issue here.

Now, the evidence has stated, Mr. Gillispie has stated that currently the company is complying with this section. And I think that from the testimony it can be fairly inferred that if any non-compliance did exist or did happen in the past it was merely a matter of oversight or failure on the part of certain key employees to do their job, and it would appear to me that the question is

moot at this time. If there has been some difficulty in the past and is now no longer in existence, and there is no penalty provision for the section purportedly violated, it would appear to this counsel that to continue this hearing would be a waste of the court's time and counsel's time and everybody's time involved.

MR. WEBER: I have a couple comments based on his comments.

HEARING OFFICER KRUPMAN: Please.

MR WEBER: The intent of the stipulation, on the [32] basis of the stipulation, was that the original charge charged 4749.06 and 4749.03(A)(2). We agreed that 4749.03(A)(2) would be dropped. But Section 4749.04 serves as the grounds for which a license may be suspended or revoked. The letter to the Licensee stated 4749.04(A) and (C). The fact that we are not proceeding under 4749.03(A)(2) cannot possibly involve a non-usage of 4749.04 since this is the provision under which all charges are made under the licensing law.

Now, 4749.10(B) states, "No private investigator or registered employee shall knowingly violate any provision of Chapter 4749."

This gets us into 4749.06. That is, the basis for this violation today was that .04(A) gets us into the general provisions of Chapter 4749. The fact that we are not proceeding under 4749.03(A)(2) does not negate the basis for the rest of our charge. And, of course, 4749.04(C), which is also charged, involves the regulations which specifies a more definite time period that these forms must be submitted. And also the fact that the witnesses stated that they submitted their fingerprints and some of them submitted cards

and some only fingerprints does not obviate the necessity that the employer comply with .06, because .06 puts the burden on the private investigator or the Licensee to register his employees. [33]

All the employee has to do is to submit certain documentation to the employer and from that step on the employer must carry the ball and must make certain that such documents are properly filed with the Division of Licensing, and the fact that the employees stated that they did submit their documents only more firmly, I think, establishes the fact that there was some dereliction of duty on the part of General Security Services.

HEARING OFFICER KRUPMAN: Thank you, Mr. Weber. Not to cut either one of you short, I think you both have made some good arguments. Again, and consequently I don't think it is something I want to decide right off the top of my head in two minutes' thought. And, therefore, I will not rule one way or the other on your first or second motions to dismiss the complaint. But I will assure you I will take them under advisement also. And if you are right it would probably be silly to go ahead with any further testimony, but I think the questions are good questions and the answers, according to Mr. Weber, are equally good and I would like to consider it with more time.

MR. ZINGARELLI: Thank you. Could we have a five-minute recess at this time?

HEARING OFFICER KRUPMAN: Certainly. Five minute recess.

(Thereupon, a short recess was taken.) [34]

MR. ZINGARELLI: I would like to call Mr. Paris at this time.

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SANFORD PARIS

Called as a witness on behalf of the Licensee, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Zingarelli:
Q Mr. Paris, would you tell your name and address in full, please?
A Sanford Paris, 6160 Cherry Hill Drive, Columbus, Ohio, 43213.
Q And are you President of General Security?
A Yes, sir.
Q And are you individually licensed as a private investigator under Section 4749.01, Ohio Revised Code, by the Licensing Division?
A I presume, yes.
Q Now, calling your attention to Mr. Gillispie's testimony, on or about the latter part of March 1971 -- first, did you have occasion to meet Mr. Gillispie some time in late March of 1971?
A Yes.
Q And where did you meet him?

A In the parking lot, basically, at 33 North Grant, [35] sir.
Q Was this after hours?
A Yes, it was.
Q And did he call you to set this meeting up?
A Yes, he did.
Q And at that time was there any discussion between you and Mr. Gillispie concerning the registering of your employees?
A Not to my recollection, no.

Q Could you tell the court exactly what the topic of your conversation was?
A The topic dealt specifically with the question of qualifications.
Q By qualifications what do you mean?
A My qualifications to be licensed as a private investigator.
Q And did he make any recommendation to you in regard to your qualifications?
A Mr. Gillispie recommended that I support my position as being qualified.
Q Did he make any suggestion as to how you might support it?
A I don't recall him doing so.
Q Now, was your conversation with him friendly?
A Yes. [36]
Q Have you always taken action when the Licensing Board has made any suggestion to you through any of its members?
A Yes.
Q And you always attempted to comply with the rules and regulations of the Licensing Board?
A Yes. I always have.
Q Now, calling your attention to your conversation -- first, did you have a conversation with Inspector O'Keefe on or about the time he mentioned?
A Yes, I did.
Q And did he montion to you the fact that -- first, he was investigating four employees of yours, is that right?
A Correct.
Q And one of them was Mr. Topsail and the other three were the ones that he mentioned proper registration had been made, is that correct?
A Yes.

Q Now, did you have any understanding as to Mr. Topsail's registration?
A It was my understanding that Mr. Topsail was exempted by nature of the statute referring to his being administrative, which was his total capacity with our company. I did nevertheless instruct Mr. Topsail at that time to submit his registration papers regardless.[37]
Q Now, Mr. Topsail was your chief administrator from the time the company started until he left the company's employment?
A Correct.
Q When did your company start?
A Approximately January 30, 1971.
Q And when did Mr. Topsail leave?
A I believe some time in April or May. I can check my records and give you more specific information.
Q All right. Now --
A Possibly June. I am not certain.
Q Did you make any direction or issue any orders to Mr. Topsail in regard to the registering of the employees of General Security?
A I did.
Q What was your order or directive to Mr. Topsail?
A I ordered Mr. Topsail, directed Mr. Topsail to see to it that all employees complied with the regulations and were registered.
Q Now, did you request the payment of the $5 to be made by the employees or was that paid by the company?
A That was paid by the company.
Q And you made available to Mr. Topsail the money with which to file the registration for your employees?
A Yes. [38]
Q Did you ever have an opportunity or

reason to believe that Mr. Topsail was not registering the employees of General Security with the Licensing Board?

A No.

Q Now, when Mr. Topsail left who took his place?

A A man by the name of Earl Martin.

Q Earl Martin?

A Correct.

Q Now, did you order or direct Mr. Martin in regard to the registration of employees?

A Yes, sir.

Q What did you order or direct Mr. Martin to do?

A Mr. Martin was directed, as standard hiring procedure, along with the application for employment of any individual, before they could be employed, that they must turn in fingerprint cards, the information card, as well as four photographs for submission to the Department of Commerce.

Q Again, the $5 was paid by the company?

A Yes.

Q And you made this money available to Mr. Martin?

A Yes.

Q And did you have any reason to know or believe that Mr. Martin wasn't complying with this regulation?

A No, sir.

Q When did it first come to your attention that [39] possibly there was a possibility of non-compliance in regard to this requirement?

A When we received notification from the Department of Commerce of their intent to revoke our license. Approximately I think September 21, approximately I believe that

notice was.
Q To refresh your recollection, didn't you receive the first notice on or about August 26?
A Yes. That's the correct date.
Q Now, what did you do when this came to your attention? First, who is in charge, who is your administrative assistant at this time?
A At that time I believe it was Lt. Peregoy.
Q And what did you do at this time to insure -- first, did you do anything at this time to insure compliance which you hadn't formerly done?
A I began to -- the basic difference -- first, I think it was Lt. Peregoy might not have been, second, I am trying to answer the question. Basic procedure had been set up. The only thing I did differently was I began to expend some personal attention into it to determine that, yes, indeed it was being complied with, and I did institute some changes in the procedure to more or less make absolutely certain that the compliance from that point on would be almost automatic. [40]
Q And since you instituted this change in your internal procedure has there been any problem in regard to compliance with this requirement?
A I don't know of any non-compliance.
Q Now, when the companies made available their monies to Mr. Topsail and Mr. Martin for the making of the application and the registration, was this given to them in cash or by check?
A Sometimes in cash, sometimes by check. It was easier in cash because the Department required certified check or cash.
MR. ZINGARELLI: I have no further

questions. Your witness.

MR. WEBER: Thank you.

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CROSS EXAMINATION

By Mr. Weber:

Q Mr. Paris, you did testify that you are the licensed private investigator for General Security Services, did you not?

A Yes, I did.

Q You consider yourself to have general supervisory control, then, over the activities of the security services as its President?

A General supervisory. [41]

Q Yes. Are you the boss generally of this operation?

A I am the President of the company.

Q And you are the licensee?

A Yes.

Q You stated that you were first informed in August of '71 concerning the problem of licensing of your employees, the registering of your employees. Is this true?

A Yes.

Q You were present, were you not, when testimony was had from both Mr. Gillispie and Liuetenant of the Fire Department that they did inform you earlier that the problem existed?

A With reference to Inspector O'Keefe specifically with regard to Capt. Topsail, and I was present, yes, when Mr. Gillispie testified.

Q You still state, though, that you did not have any personal knowledge until August of '71, is that your testimony?

A Yes.

Q Do your employees work under your direct supervision?

A No.
Q Do you have what is termed as an officer manager or someone that you delegate certain functions to? [42]
A Two people basically. Three people, I should think.
Q Does anyone else in the General Security Services Company possess a license as a private investigator?
A Yes. I believe at the present time.
Q At the time that the company first came into existence were you the only licensee or the only private investigator licensee?
A Yes.
Q So when the employees were first hired, when the first batch of employees were first hired, you were the only licensee. Is this so?
A Yes. Excuse me. Would licensee include employees?
Q No. No. I am talking about only a license as a private investigator.
A I see. Yes.
Q And at this time you serve as the licensed investigator for the General Security Services Company?
A Yes.
Q And you were the licensee of General Security Services at its inception the first part of the year?
A Yes.
MR. WEBER: I don't think I have any other questions. [43]
MR. ZINGARELLI: No further questions.
HEARING OFFICER KRUPMAN: I have no questions.
MR. ZINGARELLI: We rest, Your Honor.
MR. WEBER: We have nothing further for us either.

MR. ZINGARELLI: Does the Court wish argument?

HEARING OFFICER KRUPMAN: If you gentlemen would like to, I would be glad to hear it.

I personally don't know if it is necessary. I would assume that your motions are restated at this time, too.

MR. ZINGARELLI: I think I would just like to reiterate in about two minutes my position for the Court's benefit. I don't think it will take any longer than that.

MR. WEBER: That's fine. I have no objection.

MR. ZINGARELLI: I think that, first, my position is that there has been no showing of a violation of Section 4749.06 Sub-Section (A). Now, learned counsel on the other side states that the evidence shows that there has been a violation of this section, and that if there has been violation that it falls under 4749. It is one of the provisions of 4749.10 (B) Sub-Section (1) which says, "No private investigator or registered employee shall:" Sub-Section (1) "knowingly violate any provision of Chapter 4749 of the Revised Code." [44]

Well, adhering to may position that this section was not at issue in this matter, even if the Court should find that it is at issue the key word of this section is "knowingly." And there isn't any evidence that my client knowingly had knowledge of any specific individual who was not registered. In fact, there isn't even any evidence that he had any knowledge of any specific individual. The only two items of testimony that even come close are, one Mr. Gillispie's statement that he made a general statement to him about

registering many employees in March, and this was denied by Mr. Paris. And the other statement is that Mr. O'Keefe mentioned Mr. Topsail to him. And Mr. Paris was under the impression, the testimony was that he was under the impression that as Mr. Topsail was an administrative employee he was not required to license him. But, nevertheless, even though that was what he thought he still sent Mr. Topsail down to register, regardless, when it was brought to his attention.

Now, these hardly would be sufficient evidence to prove that someone had knowingly violated any provision of this chapter.

And the next thing that I would like to direct the Court's attention to is that even if the Court should find, and I don't believe that it could do so, but even if it should find that there was a technical violation of this [45] section, the evidence is such that certainly a warning to my client that extreme care be given not to have a further violation would be sufficient censure or penalty as the facts in this case would justify.

MR. WEBER: I have a very brief retort. We have testimony from Lt. O'Keefe, and Mr. Gillispie that Mr. Paris was informed personally of the non-compliance with the provision that employees be properly registered. Mr. Paris had this knowledge as a responsible party and licensee of General Security Services. He had the obligation to assure that his employees were registered.

Thus I would state that he did knowingly violate the provisions since he did, in fact, I think that the weight of the evidence is that he did have knowledge of the existence of the problem long before Augst. There was

testimony that Mr. Gillispie had numerous phone calls and he also had at least one personal conference with --

MR. ZINGARELLI: Objection. Mr. Gillispie's testimony, I am sure, was that he had numerous personal telephone calls.

MR. WEBER: I believe he said he had calls.

HEARING OFFICER KRUPMAN: I think whatever he might have said will be in the record, which I will reflect on.

MR. WEBER: Either way, there was evidence [46] presented that there was personal contact between Mr. Gillispie and Mr. Paris. This personal contact and the imparting of the warning, to me, indicates that Mr. Paris is responsible.

And I also go back to the charge as charged, 4749.04 (A) and (C) which was in the letter to Mar. Paris. (C) refers to any regulation of the director governing the conduct of the business of private investigation. CE5.11 imposes certain obligations, that said employees be registered within 10 days. This is also a specific requirement, and there is not even any knowing provision, knowingly provision as a part of this section.

And I will once again state that the spitulation as made, the intent of the stipulation was to keep any testimony concerning Section 4749.03(A)(2) out of the record. It was agreed between counsel that the issue at hand was registration of employees. That was the impact of the stipulation. And since 4749.04(C) was charged, this refers to a regulation that directly involves the registration of employees. And I would state that no testimony given by a witness goes beyond the stipulation, nor does the rest of the charge letter

except for the 4749.03 statement. I would also state that none of the rest of the charge letter is nullified by the stipulation.

With that I have nothing else to add.[47]

HEARING OFFICER KRUPMAN: Do you have anything further?

MR. ZINGARELLI: I think the record speaks for itself. I assume the Court is going to read the record carefully and make its decision.

HEARING OFFICER KRUPMAN: I think so. I think it is obvious that, No. 1, we have got now a question of close inspection of some of the testimony, exactly what was said by Mr. Gillispie or Inspector O'Keefe, the testimony of Mr. Paris, and tying in testimony of some of the other witnesses who were employees through the periods of their employment. And also I think we all realize that there is great difficulty in tying the section of the laws together. They interrelate and one refers to the other. And I would like to take a little time to do this for everybody's benefit and to read the record in conjunction with that. So I certainly will not make any ruling at this point.

MR. ZINGARELLI: Thank you.

- - -

(Thereupon, at 12:00 o'clock, noon, Thursday, October 21, 1971, the hearing was concluded.)

- - -

Dept's. Ex. 1

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Licensing

September 21, 1971

Mr. Sanford S. Paris
General Security Services, Inc.
923 East Broad Street
Columbus, Ohio

Dear Mr. Paris:

You are hereby notified that the Department of Commerce, Division of Licensing on August 24, 1971, after giving due consideration to your present status, proposes under authority of Section 4749.04(A) and 4749.04(C), of the Ohio Revised Code, to revoke the Private Investigator license as issued to General Security Services, Inc. and/or Sanford S. Paris, and specifically for failure to comply with 4749.06 and Section 4749.03(A)(2) of the Ohio Revised Code.

You are further hereby notified that you are entitled to a hearing before the Director of Commerce or his designated representative regarding the proposed order revoking the license as issued to General Security Services, Inc. and/or Sanford S. Paris, if you so request within thirty (30) days of the time of mailing this notice. At such hearing you may appear in person or by your attorney, or you may present your position, arguments, or contentions in writing or present evidence and examine witnesses appearing for or against you.

The date offered by the Department for the hearing is at 1:30 p.m., Thursday, October 7, 1971, in Room 207, 336 East Broad Street, Columbus, Ohio 43215. Please advise, in writing, within five (5) days of the receipt of this notice that said date, time, and place is or is not agreeable to you.
Said hearing will be conducted under procedures established by Chapter 119, Ohio Revised Code, Administrative Procedures Act.

Very truly yours,

/S/
Douglas M. Russell
Chief

DMR:jo
cc: Mr. Ted H. Finesman
Attorney at Law
Suite 406, 79 East State Street
Columbus, Ohio 43215

Thomas L. Weber
Assistant Attorney General
Statehouse Annex
Columbus, Ohio

Certified Mail
Return Receipt Requested
Mailed: September 21, 1971
Number: 368332

Dept's. Ex. 2

August 25, 1971

Mr. Sanford S. Paris
General Security Services, Inc.
923 East Broad
Columbus, Ohio

Dear Mr. Paris:

You are hereby notified that the Department of Commerce, Division of Licensing on August 24, 1971, after giving due consideration to your present status, proposes under authority of Sec. 4749.04(A) and 4749.04(C), of the Ohio Revised Code, to revoke the Private Investigator license as issued to General Security Services, Inc. and/or Sanford S. Paris, and specifically for failure to comply with Sec. 4749.06 and Sec. 4749.03(A)(2) of the Ohio Revised Code.

You are further hereby notified that you are entitled to a hearing before the Director of Commerce or his designated representative regrading the proposed order revoking the license as issued to General Security Services, Inc. and/or Sanford S. Paris, if you so request within thirty (30) days of the time of mailing this notice. At such hearing you may appear in person or by your attorney, or you may present your position, arguments, or contentions in writing or present evidence and examine witnesses appearing for or against you.

Said hearing will be conducted under procedures established by Chapter 119, Ohio Revised Code, Administrative Procedures Act.

Said hearing will be conducted under procedures established by Chapter 119, Ohio Revised Code, Administrative Procedures Act.

Very truly yours,

/S/
DOUGLAS M. RUSSELL
Chief

JJG/DMR:ir

cc: Mr. Thomas L. Webber
Assistant Attorney General

Certified Mail
Return Receipt Requested
Mailed: August 25, 1971
Number: 368303

Dept's. Ex. 3

ANTHONY R. ZINGARELLI
Attorney and Counselor at Law
Suite 1250 88 East Broad Street
Columbus, Ohio 43215

October 1, 1971

Douglas M. Russell
Chief of Division of
Licensing
33 North Grant Avenue
Columbus, Ohio 43215

Dear Mr. Russell,
Persuant to our telephone conversation with your investigator, this is to inform you that the hearing date of October 7, 1971, is not agreeable due to my present case load.

Anytime after October 15, 1971 will be agreeable, if you would please let me know ten days in advance.

Yours truly,

/S/
Ted H. Finesman

TF/kk

Dept's. Ex. 4

GERALD E. WEDREN
ACTG.

October 18, 1971

Anthony R. Zingarelli, Esq.
Attorney at Law
88 East Broad Street, Suite 1250
Columbus, Ohio 43215

Re: General Security Services, Inc.

Dear Mr. Zingarelli:

This is to confirm our telephone conversations regarding the scheduled hearing for Sanford Paris dba General Security Services, Inc. and the latest conversation this date agreeing that said hearing will be conducted at 336 East Broad Street, Columbus, Ohio, at 10:00 a.m., October 21, 1971.

Very truly yours,

Douglas M. Russell
Chief

DMR;jo

cc: Ted Finesman
Attorney at Law

Sanford Paris
General Security Services, Inc.

Dept's. Ex. 5

July 23, 1971

Dept. of Commerce
Div. of Licensing
366 E. Broad St.
Columbus, Ohio

Dear Mr. Gillespie,

Per the director the following individuals were in our employ June 30, 1971:

Simon Blakey	1250 Augmont, Columbus, O.
Fred Coverdale	215 Delhi,Apt.1, Columbus, O.
Paul Herron	1423 Manchester Ave., Columbus, O.
Brady Knapp	1932 Jermain Dr.,Columbus,O.
Robert Self	585 Reinhard Ave.,Columbus,O.
Charles Taylor	584 Fenchurch Way,Columbus,O.
George Wilkins	2395 Adams, Columbus, O.
Earl Martin	584 Fenchurch Way,Columbus,O.
Clarence Nicely	1932 Jermain, Columbus, O.
Larry Happeny	241 B. Johnston Rd., Gahanna, O.

Please contact us if we can be of further assistance.

Respectfully,

GENERAL SECURITY SERVICES

/S/
Lt. E. Martin

EM/cs

Dept's. Ex. 6

October 5, 1971

Mr. John Gillespie
Department of Commerce
Division of Licensing
33 North Grant Street
Columbus, Ohio

Dear Mr. Gillespie:

These are the men that worked up until the 30th of September:

Edward Wishman
Omar Uddin
Russell Blain
Robert Tulga
James Jordan
Michael Tackett
Brady Knapp
Simon Blakey
Mike Stires
Chad White

Very truly yours,

Lt. Peregoy
General Security Services, Inc.

MP:CC

APPENDIX B

BEFORE THE DEPARTMENT OF COMMERCE, STATE OF OHIO, DIVISION OF LICENSING

In the matter of:
General Security Services, Inc.
and Sanford S. Paris

Re: Revocation of a Private Investigation License

FINDINGS OF FACT, CONCLUSION OF LAW AND RECOMMENDATION OF ACTION OF VICTOR S. KRUPMAN, HEARING OFFICER

Hearing was held on October 27, 1971 concerning the notice of August 25, 1971 from the Department of Commerce, Division of Licensing directed to Mr. Sanford S. Paris and General Security Services, Inc. of the proposal of the Division under the authority of Section 4749.04(A) and Section 4749.04(C) of the Ohio Revised Code to revoke the Private Investigator license as issued to General Security Services, Inc. and to Sanford S. Paris, specifically for failure to comply with Section 4749.06 and Section 4749.03(A) (2) of the Ohio Revised Code.

The Division was represented by the office of Attorney General William Brown by Assistant Attorney General Tom Weber. The licensees were represented by Mr. Anthony Zingarelli and Mr. Ted H. Finesman, 16 East Broad Street, Columbus, Ohio 43215.

FINDINGS OF FACT:

It was stipulated that the licensees received notice of the hearing by letters dated August 25, 1971 and September 21, 1971; [1] both entered into the record as Department's Exhibits 1 and 2, respectively, but recorded as Department's Exhibits 2 and 1, inadvertently.

It was stipulated "that even though the notices sent covered other Sections, that this hearing will be limited to any alleged violations of Section 4749.06 Section A."

General Security Services, Inc. was at the time of the hearing licensed by the Division of Licensing, Department of Commerce, as was Sanford S. Paris. Mr. Paris was President of such corporation. He was licensed as a private investigator (an employer).

The Division received from General Security Services, Inc. and Mr. Paris lists of employees which were currently (at the date designated on the lists) employed by General Security Services, Inc. These were marked exhibits 5 and 6 of the Department.

On June 30, 1971, General Security Services, Inc. and Sanford Paris had in their employ employees that were not registered employees with the Division.

On September 30, 1971, General Security Services, Inc. and Sanford Paris had in their employ employees that were not registered employees with the Division. Two of the employees listed by the corporation as employed as of June 30, 1971 registered with the Division, but not until after July 23, 1971. The rest had not registered as of the date of this hearing.

Mr. John T. Gillispie, Investigator, Division of Licensing, Department of Commerce, State of Ohio, appraised Mr. Sanford Paris late in May or early in June of 1971 that it was necessary to register his employees.

The Division had a list of Mr. Paris's employees as of October 5, 1971 and they were all properly registered. [2]

The licensees had an employee named Peregoy, who was hired on July 24, 1971 and

was not registered as an employee until September 3, 1971.

The licensees were apprised of the necessity of registration of their employees by Mr. John O'Keefe, Arson Investigator, City of Columbus, early in April of 1971.

Earl Martin was an employee of the licensees on June 30, 1971. He was employed in March of 1971, and he left their employ about August 20, 1971. He acted at first as a security guard. No registration for such man was ever made by the licensees. Mr. Martin was requested by the licensees or their agent to fill our an application and to provide fingerprints and photographs when he was first employed.

Charles Taylor was an employee of the licensees on June 30, 1971. He was employed in the Spring of 1971 and was an employee for three or four months or longer. Mr. Taylor was never registered by these licensees with the Division. Mr. Taylor was employed as a guard.

Clarence Nicely was in the employ of the licensees for over a month and was never registered although he did provide them with his fingerprints and photograph. He was an employee on June 30, 1971.

Brady Knapp was employed by the Licensees from June 21, 1971 as a general watch guard until two or three weeks before the hearing on October 27, 1971. He was listed as an employee of the licensees as of September 30, 1971. He was never registered by the Division nor was application for registration made on his behalf. [3]

Sanford Paris knew that his employees had to be licensed with the Division. Sanford Paris had directed his agents to properly

register his employees with the Division of Licensing. Sanford Paris's agents had not followed his direction and had not registered his employees or the employees of the corporation for which he was President and an executive officer, General Security Services, Inc. with the Division of Licensing.

CONCLUSIONS OF LAW:

The licensees moved at the close of the presentation of testimony by the Division that the complaint be dismissed because almost every witness had testified that he did some time or another make an application for registration. As the hearing is confined to a violation of Section 4749.06 (a) and as that section does not set any time for the submission of the registration by the licensees to the Department of Commerce, the licensees contend that no violation has been proved.

This Hearing Officer overrules such motion. The facts do not show application for registrations were submitted by the employees. The facts show applications, photographs, and fingerprints were ofter requested and sometimes submitted to the Corporation's agents, but no showing has been made that these items were filed with the Division.

Section 4749.06(A) states:

"Each private investigator shall register his employees, exclusively of clerical help, with the department, which shall compile and keep current a list of all licensees and registered employees and make it available, upon request, to any law enforcement agency." [4]

The facts show that the private investigator herein under consideration failed to register many of his employees, who were not in the class excluded by the statute.

Further pertinent regulations promulgated by the Department of Commerce state as follows:

COc-5-11

Registration of Employees

(a) Each licensee shall, except with respect to administrative and janitorial personnel, and to persons exempt from registration pursuant to section 4749.06, Revised Code:

(1) Within ten (10) days after the employment of each new employee, file the appropriate registration form with the Department of Commerce, Division of Licensing.

(2) Within ten (10) days after the termination of a registrant's employment, notify the Division of such termination, giving the date thereof, and submitting said employees identification card for cancellation.

This regulation further defines Section 4749.06, Ohio Revised Code, and requires the filing of the registration forms of an employee within ten (10) days after the employment. Although the hearing was limited to violations of Section 4749.06 (A), Ohio Revised Code, referral to the regulations promulgated regarding this Section is implicit in the limitation.

The reason for the statement of this stipulation was to eliminate any discussion in the hearing of violations of Section 4749.03 (A) (2), Ohio Revised Code. Section 4749.06 (A) was not complied with nor was Regulation COc-5-11.

The licensees further moved that the complaint be dismissed [5] on the grounds that

even if there was a violation of Section 4749.06 (A), Ohio Revised Code, there is no provision in the statute for penalty for the violation of this section by itself.

This hearing officer overrules such motion.

Section 4749.04, Ohio Revised Code states that the Director of Commerce may revoke the license of any private investigator upon the grounds of:

"(A) Violation of any of the provisions of Division
(B) of Section 4749.10 of the Revised Code;"
(C) Violation of any regulation of the Director governing the conduct of the business of private investigation."

The licensees were notified that these were the authority under which the Department of Commerce intended to revoke their licensees.

Divisions (B) of Section 4749.10 of the Ohio Revised Code says in part:

"(B) No private investigator or registered employee shall:
(1) knowingly violate any provision of Chapter 4749 of the Revised Code."

The licensees were notified that the hearing would regard any alleged violations of Section 4749.06 (A); and the parties stipulated that the hearing would be limited to any alleged violations of such section. The licensees were directed to the specific section of the Code that they were being charged with violating (i.e. failure to register employees).

Section 4749.04 (A) authorizes revocation for a violation of any of the provisions of

Section 4749.10 (B). Section 4749.10 (B) states [6] that no private investigator shall knowingly violate any provision of Chapter 4749 of the Revised Code. The licensees have been charged with violating Section 4749.06 (A) and have been put on notice to defend the charge of violating such section.

Implicit in the proposal to revoke under Section 4749.04 (A) is the reference to Section 4749.10 (B) requirement of a violation with knowledge.

There is no penalty for the violation of Section 4749.06 (A) unless such section is knowingly violated. The Division must not only prove that the provision was violated, but it also must prove that it was knowingly violated. The hearing was limited to any alleged violations of Section 4749.06 (A). A violation of Section 4749.06 (A), knowingly is in and of itself a violation of Section 4749.10 (B) (knowingly violate any provision of Chapter 4749 of the Revised Code), the violation of which revokes the powers to revoke under Section 4749.04 (A).

Also Section 4749.99 states:

"Any person who violates any provision of Section 4749.10 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not more than one year, or both."

Consequently, the limitation of the hearing to alleged charges under Section 4749.06 (A) does not preclude the reference to Sections 4749.10 (B) and 4749.04 (A) and (C), Ohio Revised Code.

This hearing officer finds that the licensee, Sanford S. Paris, knowingly violated the provisions of Section 4749.06 (A). He cannot hide behind the failure of his agents,

but is responsible for their [7] acts or lack of action. Their inaction by failing to register employees was his failure to register. He cannot delegate his duty and then contend he did not know his obligation was not being attended to and therefore he did not knowingly violate the statute. To allow such argument would make mockery of the law and make it impossible to enforce.

Further this hearing officer finds that the licensee, Sanford S. Paris, knowingly violated regulation COc-5-11 of the Director, which regulation governs the conduct of the business of private investigation.

RECOMMENDATION OF ACTION TO BE TAKEN BY THE DIVISION OF LICENSING:

This hearing officer acknowledges that the agency may revoke the licensee, Sanford S. Paris's, license upon the findings above stated, but based on the record before him would recommend the licensee be fined One Thousand Dollars ($1,000.00) under the authority of Section 4749.99, Ohio Revised Code.

Respectfully submitted,

/S/ Victor S. Krupman
Hearing Officer and Attorney
Schwartz & Schwartz
250 East Broad Street
Columbus, Ohio 43215
614-224-3168

APPENDIX C

IN THE MATTER OF:
Sanford S. Paris
dba General Security Services, Inc.
923 East Broad Street
Columbus, Ohio 43215

DEPARTMENT ORDER

After giving due consideration to the Hearing Officer's findings of fact, conclusions of law and recommendations in this matter, and after reviewing the testimony and evidence presented at the public hearing conducted on October 27, 1971, and no written objections thereto having been filed with this Department with the time prescribed by Section 119.09 of the Ohio Revised Code or extension of time for same requested, I hereby confirm and approve the Hearing Officer's findings of fact, conclusions of law, and recommendations as submitted in this matter, but as to the penalty to be prescribed, I hereby order that license number 228 issued to General Security Services,Inc. 923 East Broad Street, Columbus, Ohio 43215 be revoked.

Section 119.12, Ohio Revised Code, authorizes an appeal from this order. Such appeal may be taken to the Court of Common Pleas of the county in which your place of business is located. Such an appeal must be commenced by the filing of an appeal with the Division of Licensing, Department of Commerce, State of Ohio. A copy of such notice of appeal must be filed within fifteen (15) days after the mailing of this communication.

Gerald E. Wedren
Acting Director
Department of Commerce

APPENDIX D

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Sanford S. Paris, DBA
GENERAL SECURITY SERVICES, INC.
Appellant,

CASE NO. 72 CV-01-78

v.

STATE OF OHIO, ex rel., JUDGMENT ENTRY
GERALD E. WEDREN, DIRECTOR,
et al.,
Appellees.

This day this cause came on to be heard upon the appeal from an order of the Acting Director of the Department of Commerce, State of Ohio, revoking appellant's private investigator's license.

The Court, upon consideration of the pleadings and briefs of the parties, and being fully advised in the premises, finds that the order from which this appeal is taken is supported by reliable, probative, and substantial evidence and is in accordance with law.

It is, therefore, ORDERED, ADJUDGED, and DECREED that the order of the Acting Director of the Department of Commerce, State of Ohio, revoking appellant's private investigator's license is affirmed, and accordingly, judgment is rendered in favor of appellee and appellant's appeal is dismissed.

Exceptions saved. Costs to be assessed against appellant.

Fred J. Shoemaker, Judge

APPROVED:
WILLIAM J. BROWN
Attorney General
State of Ohio

DOUGLAS E. VAN WINKLE
Assistant Attorney General
57 East Gay Street
Columbus, Ohio 43215
(614) 469-8636

Attorneys for Appellee
Department of Commerce

ANTHONY R. ZINGARELLI
Attorney at Law
876 East Broad Street
Columbus, Ohio 43215
(614) 25308544
Attorney for Appellant

APPENDIX E

IN THE COURT OF APPEALS OF FRANKLIN CNTY,OHIO
Sanford Paris,
dba General Security Services, Inc.,
Plaintiff-Appellant,
No. 73AP-155

v.
State of Ohio
(ex rel. Gerald E. Wedren, Director),
Department of Commerce,
and
State of Ohio,
(ex rel. Douglas Russell, Chief),
Division of Licensing,
Defendants-Appellees.

D E C I S I O N
Rendered on August 28, 1973

MR. ANTHONY R. ZINGARELLI,
875 East Broad Street,
Columbus, Ohio,
For Plaintiff-Appellant.
MR. WILLIAM J. BROWN, Attorney General
MR. DOUGLAS E. VAN WINKLE, Assistant,
Statehouse Annex,
Columbus, Ohio,
For Defendants-Appellees.

No. 73AP-155
HOLMES, J.

This matter involves the appeal of a judgment of the Common Pleas Court of Franklin County, affirming the order of the director of commerce revoking the appellant's security guard license for not registering the employ-

ees of the appellant's security service company as required by R. C. 4749.06(A).

The appellant sets forth two assignments of error as follows:

> "I. The Director of commerce erred in revoking the license of the Appellant herein on the basis that... 'Sanford S. Paris, knowingly violated the provisions of Section 4749. 06(A)' because the record is devoid of evidence of the intent necessary to 'knowingly' violate the provisions of Chapter 4749, O.R.C. and therefore the decision is against the manifest weight of the evidence.
>
> "II. The Director of Commerce erred in admitting and considering testimony and statutes which were not in issue in this case due to the facts that the issues and therefore the applicable law were agreed upon by counsel herein by stipulation."

Both assignments of error are without merit.

First, it is our view that the record could support a finding that the appellant was quite well aware that his employees were required to registered and knew that in fact they were not so registered. It is our view that the appellant knowingly violated the provisions of Chapter 4749 of the Revised Code.

As to assignment of error number 2, the Department of Commerce, in order to initiate a license revocation or suspension action, must have a statutory basis for so acting. Section 4749.04, Revised Code, sets out the grounds for which the director of commerce may revoke the license of any private investigator.

Section 4749.04(A), Revised Code, lists one of these grounds as follows:

> "(A) Violation of any of the provisions of division (B) of Section 4749.10 of the Revised Code."

Thus, Violation of subsection (B) of section 4749.10, Revised Code, is a specific ground warranting the revocation of a private investigator's license. Section 4749.10(B), Revised Code, in turn prohibits knowing violations of any of the provisions of Chapter 4749, and is worded, in part, as follows:

> "(B) No private investigator or registered employee shall:
> "(1) Knowingly violate any provisions of Chapter 4749 of the Revised Code;

In the case presently before us, the licensee was charged with a violation of section 4749.06 of the Revised Code, which provides for the registration of employees of licensed private investigators with the Department of Commerce, Department of Licensing.

No. 73AP-155

The stipulation only had effective reference as to the section pertinent to the adjudication and the evidence as adduced therein. It certainly could not be effective to deny the director his legal right to assess the penalty as the director in his judgment might determine to be applicable pursuant to law for any violation found upon such adjudication.

For the foregoing reasons the judgment of the Common Pleas Court of Franklin County affirming the order of the Director of the Department of Commerce is hereby affirmed.

TROOP, P.J., and STRAUSBAUGH, J., concur.

APPENDIX F

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.
Sanford S. Paris, dba
General Security
Services, Inc.,
Appellant,

vs.

State of Ohio,
ex rel. Gerald E.
Wedren, Dir., Dept.
of Commerce, et al.,
Appellees.

1973 TERM
To wit: December 31,1973

No. 73-881
MOTION FOR AN ORDER
DIRECTING THE COURT
OF APPEALS
for FRANKLIN County

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:
Motion Fee, $20.00, paid by Anthony R. Zingarelli

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court
this ___ day of _____ 19____

_____ Clerk

_____ Deputy

SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JUN 28 1974
MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1974

SANFORD S. PARIS, DBA GENERAL SECURITY SERVICES, INC., *Petitioner*	
v.	NO. 73-1691
GERALD E. WEDREN, DIRECTOR, DEPARTMENT OF COMMERCE, et al., *Respondents*	

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

WILLIAM J. BROWN
Attorney General
State of Ohio

MICHAEL R. GROVE
Assistant Attorney General
57 East Gay Street
Columbus, Ohio 43215

GARY E. BROWN
Assistant Attorney General

GEOFFREY E. WEBSTER
Legal Intern

Counsel for Respondents

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In the
Supreme Court of the United States

OCTOBER TERM, 1974

NO. 73-1691

SANFORD S. PARIS, DBA,
GENERAL SECURITY SERVICES, INC.
Petitioner

v.

GERALD E. WEDREN, DIRECTOR,
DEPARTMENT OF COMMERCE, et al.,
Respondents

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE
OF OHIO

I. THE GRANTING OF A WRIT OF CERTIORARI WOULD BE IMPROVIDENT WHERE NO STATE COURT BELOW HAS BEEN PRESENTED WITH OR CONSIDERED OBJECTIONS BASED UPON ALLEGED VIOLATIONS OF FEDERAL RIGHTS SECURED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

While it is established beyond cavil that certiorari is the only mode of review when a judgment rendered by a state court sustains the validity of the state's authority against attacks based on federal rights (*Ireland v. Woods*,

246 U.S. 323 (1918)); it is equally well established, and resting upon the soundest principles of policy, that the federal question upon which a Petition for Writ of Certiorari is grounded must have been raised in the lower courts (*Loeb v. Columbia Township*, 179 U.S. 472 (1900)). Petitioner devotes numerous pages of his Petition for Writ of Certiorari to an attempt to establish the existence, in this action, of the necessary prior assertion of a denial of a federal right in the administrative proceedings now under scrutiny. A review of the pleadings and decisions of the lower courts can only result in the conclusion that Petitioner failed to properly raise the federal questions he now asserts.

Admittedly, no particular form of words is required to press a federal right in state courts. However, the federal rights in question must have been brought to the attention of and have been considered by the lower courts. *See generally, Lawler v. Walker*, 14 How. 149 (1852); *Herndon v. Georgia*, 295 U.S. 441 (1934); *Street v. New York*, 394 U.S. 576 (1969). Petitioner, at page 29 of his Petition for Writ of Certiorari, argues that because one of his grounds for appeal was that the decision was contrary to law, and that "the 'law' includes the federal constitution", it follows that the federal questions sought to be reviewed were properly raised. It is respectfully submitted that this assertion is incorrect. In the case of *Herndon v. Georgia, supra*, the United States Supreme Court held that an assertion, in the trial court, that the indictment was in violation "of the Constitution of the United States" did *not* constitute a sufficient invocation of a federal question. In addition, an assertion that one was "bound by law" was specifically held not to be tantamount to the assertion of a federal rights question in the case of *Louisville & N.R. Co. v. Smith, Huggins & Co.*, 204 U.S. 551 (1906). Petitioner's ground for appeal — that the decision was "contrary to law" — fails for the same

indefiniteness that caused the petitioner in the *Louisville & N.R. Co.* case, *supra,* to fail.

In the instant action the Petitioner did not raise or assert the denial of a federal right until after the administrative agency involved, the Court of Common Pleas of Franklin County, the Franklin County Court of Appeals, and the Ohio Supreme Court had all passed upon and decided his appeal. At no stage in the appellate procedure was an Ohio Court faced with a due process argument. As a matter of fact, such was not raised until the Petitioner filed, on April 5, 1974 (*subsequent* to the Ohio Supreme Court's denial of Motion to Order the Court of Appeals to Certify the Record), a Supplemental Statement in Support of Motion for Relief from Judgment and for a New Trial in the Court of Common Pleas of Franklin County. Raising the constitutional issues at this point in time is not sufficient, for, in the words of Mr. Justice Sutherland,

> "The long-established general rule is that an attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it." *Herndon v. Georgia,* supra at 443.

At no time in the state courts were the federal questions now before this Court ever considered, for the simple reason that at no time was a federal question raised, briefed, argued, or in any manner presented to any of the courts considering this action on appeal.

Petitioner cites numerous Ohio authorities establishing the principle in Ohio jurisprudence that an Ohio court may consider errors not assigned. That may very well be a correct statement of the law in Ohio. However, in the context of the present action before this honorable Court one must look beyond the rules of the Ohio courts. Specifically, it must be noted that the inescapable fact remains that *no* lower court *ever* considered this action in relation to the

due process provisions of the Fourteenth Amendment to the United States Constitution. What the Ohio courts *may do* does not establish what the Ohio courts *did*.

U.S. Sup. Ct. Rule 19.1(a), 28 U.S.C., represents a codification of the long standing, well entrenched doctrine that a state court must have considered and decided a federal question before review on certiorari may be obtained. Thus, a case must have constitutional dimensions before the filing of a Petition for a Writ of Certiorari; the present case was not, in the course of appeal, adorned with these dimensions until the present Writ was filed. *Ergo*, the lack of timely and providently raised issues of constitutional dimension results in jurisdictional defects to the extent that Petitioner is not properly before this honorable Court and should not be granted the Writ of Certiorari which he seeks.

II. A WRIT OF CERTIORARI WILL NOT ISSUE TO REVIEW EVIDENCE, DISCUSS SPECIFIC FACTS, NOR TO REVIEW INFERENCES DRAWN FROM FACTS IN AN ADMINISTRATIVE PROCEEDING.

There exists a long line of authority establishing the now well-settled proposition that the Supreme Court of the United States will not grant certiorari to review evidence and discuss specific facts. *See generally, United States v. Johnston*, 268 U.S. 220 (1925); *National Labor Rel. Board v. Waterman S.S. Corp.*, 309 U.S. 206 (1940); *General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175 (1938). In spite of this well-settled doctrine, the Petitioner now requests this Court to grant certiorari based upon what Petitioner alleges the facts, as established in the record, show or fail to show. Many pages of his petition are filled with quotations from the record followed by a lengthy dissertation over what the evidence does or does not establish. In essence, the Petitioner seeks to entice this

Court to substitute its judgment in place of the judgment of the Ohio administrative agency involved as to what the facts establish. Framed as a due process argument is the desire of Petitioner that this Court deny the Ohio administrative agency the opportunity to utilize its expertise in the regulation of private investigators. It is respectfully submitted that such is not the function of certiorari, nor is it the function of a court when reviewing a determination of an administrative agency.

A review of only that portion of the record of the administrative hearing quoted at pages 32 to 35, inclusive, of the Petition for Writ of Certiorari indicates the existence of reliable, probative and substantial evidence from which the hearing officer could, at the least, draw a permissible inference, as he did, that Petitioner violated the statutes requiring registration of employees. Where fairly arrived at, an inference having reasonable support in the record of an administrative proceeding must be accepted by a court. *Houston v. St. Louis Independent Packing Co.*, 249 U.S. 479 (1919); *Federal Trade Commission v. Algoma L. Co.*, 291 U.S. 67 (1934); *National Labor Rel. Bd. v. Bradford Dyeing Asso.*, 310 U.S. 318 (1940). The same rule prevails in Ohio. *See generally*, 1 O. Jur.2d 569, Administrative Law and Procedure § 181.

For the purpose of demonstrating reasonable support for the inferences drawn in the instant action one may consider the following:

1. Licensure of Petitioner to conduct the business was obtained in January, 1971. (See, Petition for Writ of Certiorari, pg. 32, hereinafter "Petition");
2. In July, 1971, Petitioner sent a list of employees to the Division of Licensing, Department of Commerce. (Petition, pg. 33);
3. Only two of the employees named on the above-mentioned list were registered. (Petition, pg. 34).

For purposes of clarity, it should be noted that the above-mentioned list of employees mailed to Respondent was not a registration, or attempted registration, of those listed employees. Section 4749.06, Ohio Revised Code, details the requirements which must be met to properly register employees and the letters would not be sufficient to satisfy those statutory requirements; nor has it ever been asserted that such was Petitioner's intent in sending the letters. There is no denial of due process where one infers from these established facts that the remaining employees on the list were not registered. Similar results can be obtained by reading the entire record for all "controverted" issues of fact.

Furthermore, Petitioner vigorously argues that the record fails to show that he "knowingly" failed to register his employees. In analyzing Petitioner's arguments, it would appear that he considers this to be a concrete entity which one can see and touch. Of course, *scienter* is not such an entity. It is something which can only be inferred from the facts presented. The hearing officer did exactly this in determining that the Petitioner herein knowingly failed to register certain of his employees and all of the Ohio Courts have determined that such inference is supported by reliable, probative and substantial evidence.

III. PROCEDURAL DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS TO THE NOTICE SENT PETITIONER WERE SATISFIED.

In order for any particular notice to comply with the due process requirements of the Fourteenth Amendment to the United States Constitution, the notice employed must be a "... timely and adequate notice detailing the reasons

for a proposed termination . . .". *Goldberg v. Kelly*, 397 U.S. 254, 267, 268 (1970). In the instant action there exists no dispute as to the timeliness of the notice; the dispute centers upon the adequacy of the notice. Petitioner contends that lack of reference to Section 4749.10(B)(1), Ohio Revised Code, in the notice which he received constitutes a denial of due process.

The notices sent to Petitioner stated that under the authority of Section 4749.04, Ohio Revised Code, the Division of Licensing, Department of Commerce, proposed to revoke Petitioner's license for failure to comply with Section 4749.06(A), Ohio Revised Code. (See Petition, Appendix, pages 93-96, inclusive).

Section 4749.04, Ohio Revised Code, provides, insofar as pertinent:

> "The grounds for which the director of commerce may revoke, suspend, or refuse to renew the license of any private investigator or the registration of any employee includes any of the following: (A) Violation of any of the provisions of division (B) of section 4749.10 of the Revised Code . . ." Volume 47, Page's Ohio Revised Code Annotated, 1972 Supplement, page 140.

Section 4749.06(A), Ohio Revised Code, provides:

> "Each private investigator *shall register his employees*, exclusive of clerical help, *with the department*, which shall compile and keep current a list of all licensees and registered employees and make it available, upon request, to any law enforcement agency." (Emphasis added.) Volume 47, Page's Ohio Revised Code Annotated, 1972 Supplement, page 141.

Section 4749.10(B), Ohio Revised Code, provides:

> "(B) No private investigator or registered employee shall: (1) Knowingly violate any provision of Chapter 4749. of the Revised Code." Volume 47, Page's Ohio Revised Code Annotated, 1972 Supplement, page 142.

Quite clearly, Section 4749.10(B)(1), Ohio Revised Code, is a "basket clause" provision, the sole purpose for which is to insure compliance with the various statutory mandates established throughout the remainder of Chapter 4749., Ohio Revised Code. A reading of Section 4749.10 (B)(1), Ohio Revised Code, indicates that problems of constitutional dimension would quite possibly be present had respondents only made reference to Sections 4749.04 (A), and 4749.10(B)(1), Ohio Revised Code. Had that been the situation, the notice would have been a futile gesture so replete with vagueness that there would have been little opportunity to prepare for the hearing or know what specific statutory requirement Petitioner had allegedly violated or failed to comply with. But that is not what occurred. Specific and direct reference was made to that section which would most adequately inform the Petitioner of what the proceedings were to be concerned with in order to assure that Petitioner would be able to present his defense at the hearing. The specific act or omission that Petitioner was charged with and notified of was his failure to register employees as required by Section 4749.06(A), Ohio Revised Code. Reference to Section 4749.10(B)(1), Ohio Revised Code, would not have aided Petitioner's preparation for the hearing in the slightest as it has nothing to do with the act or omission for which his license was revoked. Rather, it was merely relied upon as a statutory vehicle for enforcing the registration requirements of Section 4749.06(A), Ohio Revised Code. It is respectfully submitted that the notice given must be suitable for a given case and it is only where the proceedings are arbitrary, oppressive, or unjust that notice will be said not to comport with due process requirements. See *Glidden v. Harrington*, 189 U.S. 255 (1903). In reference to the instant petition, the notice sent was suitable and the proceedings were fairly conducted.There was no denial of due process.

CONCLUSION

Respondents respectfully submit that a Writ of Certiorari should not issue in the instant proceeding. Petitioner failed to afford to the lower courts considering this action on appeal the opportunity to pass upon or consider the issue of denial of federal rights. Since the beginnings of the American system of jurisprudence such a failure precludes the issuance of a Writ of Certiorari by this Court. Further, certiorari would not be proper to review the evidence in the record in relation to the inferences drawn therefrom or the facts established thereby. Though without regard to the federal rights questions which were never raised, the Ohio judiciary has considered the inferences drawn from the facts as presented and found them to have been fairly established in the record. A reading of the defenses presented by the Petitioner at the administrative hearing amply demonstrates that the notice sent Petitioner comported fully with the due process requirements of the Fourteenth Amendment to the United States Constitution. Clearly, via the notice employed, Petitioner was fully informed of the violations resulting in revocation of his license.

Furthermore, issues of constitutional dimension which are of great public and national concern and which are worthy of this honorable Court's consideration are of such calibre inherently. The issues presented herein are well settled and Petitioner cannot, as he has tried, make the situation otherwise by merely alleging, as he has, that the issues presented herein are of great public importance because state regulatory agencies have great powers and that their dictates are rubber-stamped by their state courts. Respondents submit that this is not the state of affairs in Ohio.

Based upon the foregoing, Respondents respectfully submit that this Court should refuse to grant Writ of Certiorari in the instant action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, in accordance with U. S. Sup. Ct. Rule 33, 28 U.S.C., that three copies of the foregoing have been mailed, postage prepaid, to the office of Andrew M. Fishman, Esq., Attorney for Petitioner, Thompson, Swope, Burns & Biswas, 6810 East Main Street, Reynoldsburg, Ohio 43068, this ..... day of ....., 1974.

MICHAEL R. GROVE
Assistant Attorney General